

**RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
WALNUT CREEK MUTUAL THIRTY-NINE (MUTUAL 39)
FORMERLY PROJECT THIRTY-NINE**

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**RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF WALNUT CREEK MUTUAL THIRTY-NINE (MUTUAL 39)**

RECITALS

This Restated Declaration of Covenants, Conditions and Restrictions (“Restated Declaration”) is made on the date hereinafter set forth by “Walnut Creek Mutual Thirty-Nine (Mutual 39)” (“the Mutual”), a California Common Interest Development Corporation, as the Successor Declarant to the Declaration of Covenants, Conditions and Restrictions recorded the 28th day of May, 1974 in the Contra Costa Recorder’s Office, Book 7235, Page No. 265, and all subsequent amendments and additions thereto and terminates the Agreement Establishing Covenants, Conditions and Restrictions recorded on May 28, 1974 in Book No. 7235 of Official Records of Contra Costa County, Page No. 250 and all subsequent amendments and additions thereto. and the Agreement Establishing Covenants, Conditions and Restrictions recorded on May 20, 1977 in Book No. 8339 of Official Records of Contra Costa County, Page No. 59 and all subsequent amendments and additions thereto and the Agreement Establishing Covenants, Conditions and Restrictions recorded on July 25, 1980 in Book No. 9926 of Official Records of Contra Costa County, Page No. 32 and all subsequent amendments and additions thereto.

This Restated Declaration of Covenants, Conditions and Restrictions is made with respect to the May 28, 1974 Declaration of Covenants, Conditions and Restrictions and all subsequent amendments and additions thereto concerning the property in the City of Walnut Creek, County of Contra Costa, State of California, described as follows:

Lots 1 and 2 as shown on the map of “Subdivision 4626 (Mutual 39) City of Walnut Creek, Contra Costa County, California” filed May 28, 1974 in Book 169 of Maps, Pages 20, 21 and 22 in the office of the County Recorder of Contra Costa County;

Lot 1, Subdivision 4985, as shown on the map of “Subdivision 4985 (Mutual 43), City of Walnut Creek, Contra Costa County, California”, filed May 5, 1977 in Book 196 of Maps, Pages 15, 16 & 17, in the office of the County Recorder of Contra Costa County; and,

Parcel A, as shown upon the map entitled “Parcel Map M.S-W-C-810-80 Mutual Fifty-Two”, filed June 24, 1980, in Book 88 P.M., at Pages 1 & 2 in the Office of the Recorder of Contra Costa County.

It was the intention of the original declarant to sell and convey residential condominiums to the Owners, subject to protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between the original declarant and such Owners. This Restated Declaration is intended to be in furtherance of this intention particularly for the use of the property as a “condominium project” as that term is defined in Section 4125 of the California Civil Code. The above described property is and shall remain as a “Senior Citizen Housing Development” as defined in California Civil Code Section 51.3(b)(3) and it is Housing for Older Persons under the United States Fair Housing Amendments Act of 1988, 42 U.S.C.S. Section 3607(b)(2). Finally, it remains the intention of the Mutual that the “Common Areas” and “Common Facilities” be owned and maintained by the Mutual, but reserved exclusively for the use and enjoyment of the Members of the Mutual, their tenants,

lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents, including this Restated Declaration.

On _____, 2020, at least fifty percent plus one (1) of the Owners of condominium units voted by written ballot to restate the original Declaration of Covenants, Conditions, and Restrictions and all subsequent amendments and attachments thereto in accordance with the procedures for amendment set forth therein. The Owners' action to restate by the required percentage of affirmative votes is attested by the execution of this Restated Declaration by duly authorized officers of the Mutual, as required by California Civil Code Section 4270(a)). As so restated, the easements, covenants, restrictions and conditions set forth herein shall run with the property and shall be binding upon all parties having or acquiring any right, title or interest in the property or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 - DEFINITIONS

Unless the context indicates otherwise, the following terms shall have the following definitions:

[1.1] Architectural Review Committee. The Architectural Review Committee is as described in **Section 7.1**.

[1.2] Articles. The term "Articles" shall mean the Articles of Incorporation of the Mutual and any amendments thereto.

[1.3] Assessment. "Assessment" shall mean any Regular, Special or Reimbursement Assessment made or assessed by the Mutual against an Owner and their unit in accordance with **Article 6** of this Declaration.

[1.4] Board. The term "Board" shall mean the Board of Directors of the Mutual.

[1.5] By-Laws. The term "By-Laws" shall mean the By-Laws of the Mutual and any amendments thereto.

[1.6] 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.

[1.7] Common Area. The "Common Area" shall mean and refer to the entire Project except the Units. Undivided fractional interests in the Common Area shall be owned by the Owners of the Units as tenants in common, in equal shares, one for each Unit. Common Area shall include, but shall not be limited to, Exclusive Use Common Area, all facilities and improvements located within the Common Area including driveways, parking areas, open spaces, storage areas, planted and landscaped areas, roofs, foundations, stairs, walkways, pipes, ducts,

flues, chutes, conduits, wires and other utility installations to the outlets; bearing walls, columns, and girders to the unfinished surfaces.

[1.8] Common Expenses. The term "Common Expenses" means and includes the actual and estimated expenses of operating the property and any reasonable reserve determined by the Board and all sums designated Common Expenses by or pursuant to the Mutual's governing documents.

[1.9] Condominium. A "Condominium" shall mean the entire property to be conveyed by the deed to a grantee, including a Unit, an undivided interest in the Common Area, and appurtenances thereto, all as more particularly defined in Section 4125 of the Civil Code of the State of California.

[1.10] Condominium Plans. The "Condominium Plans" shall mean and refer to the original plans prepared and recorded in the official County records for the property referenced above. Said Condominium Plans are incorporated by reference into this Restated Declaration.

[1.11] Declarant. The term "Declarant" shall mean Mutual 39, or any successor or assign that assumes in writing the rights and duties of the Declarants hereunder.

[1.12] Declaration. The term "Declaration" shall mean and refer to this Restated Declaration of Covenants, Conditions, and Restrictions and any amendments or corrections thereto.

[1.13] Development. The term "Development" shall mean the condominium developments that were constructed on the described properties and made subject to this Declaration, including the Condominiums and all other Improvements thereon.

[1.14] Director. The term "Director" shall mean and refer to a member of the Board of Directors.

[1.15] Exclusive Use Common Area. The term "Exclusive Use Common Area" (designated as "Limited Common Area" in the previous Declaration) shall mean any portion of the Common Area, the exclusive use of which is restricted to a particular Unit.

[1.16] Foundation. The term "Foundation" shall mean the Golden Rain Foundation of Walnut Creek, a California non-profit corporation.

[1.17] Garage. "Garage" shall mean a space 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. Each Garage as separately shown, defined and delineated in the Condominium Plans consists of the space bounded by and contained within the interior unfinished surface of the perimeter walls, floors, ceilings, windows and doors of each Garage. Each Garage includes both the portions of the building so described and the air space so encompassed. Bearing walls and all walls containing any utility conduit to the unfinished surface of such walls and the main Garage door and tracks are specifically excluded. Garages are Exclusive Use Common Area.

[1.18] Governing Documents. “Governing Documents” shall mean this Restated Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations.

[1.19] Improvements. “Improvements” shall mean any buildings or fixtures affixed to any Property in the Development.

[1.20] Maintenance. “Maintenance” shall mean the exercise of reasonable care to keep buildings, driveways, landscaping and other related improvements and fixtures in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping also means the exercise of regular fertilizing, irrigation and other garden management practices necessary to reasonably promote a healthy, weed-free environment for optimum plant growth.

[1.21] Map. The term “Map” shall mean the subdivision maps set forth in the property descriptions above.

[1.22] Member. The term “Member” shall mean and refer to owners of units who are those persons entitled to membership as provided herein and in the By-Laws for the Mutual.

[1.23] Mortgage. The term “Mortgage” shall mean a recorded mortgage or deed of trust against a Condominium.

[1.24] Mortgagee. The term “Mortgagee” shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Condominium.

[1.25] Owner. The term “Owner” shall mean the record title owner or owners of a Condominium who shall also be concurrent members of the Foundation.

[1.26] Person. The term “Person” shall mean any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

[1.27] Project. The term “Project” shall mean the entire subject property described in the Recitals herein, including without limitation, all Units, Exclusive Use Common Areas, Common Area and easements.

[1.28] Properties. The term "Properties" shall mean and refer to that certain real property located in the City of Walnut Creek, Contra Costa County, State of California, described as follows:

Lots 1 and 2 as shown on the map of “Subdivision 4626 (Mutual 39) City of Walnut Creek, Contra Costa County, California” filed May 28, 1974 in Book 169 of Maps, Pages 20, 21 & 22 in the Office of the Recorder of Contra Costa County;

Lot 1, Subdivision 4985, as shown on the Map of “Subdivision 4985 (Mutual 43) City of Walnut Creek, Contra Costa County, California” filed May 5, 1977 in Book 196 of Maps, Pages 15, 16 & 17, in the Office of the Recorder of Contra Costa County; and,

Parcel A, as shown upon the map entitled “Parcel Map M.S-W-C-810-80 Mutual Fifty-Two”, filed June 24, 1980, in Book 88 P.M., at Pages 1 & 2 in the Office of the Recorder of Contra Costa County.

[1.29] Rules. The term “Rules” shall mean the rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 5.6(b)**.

[1.30] Unit. The term “Unit” shall mean and refer to the elements of each individual Condominium which are not Common Area. The boundaries of each Unit shall be as described and shown in the original Condominium Plans and attachments and in **Article 2, Section 2.2**.

ARTICLE 2 - PROPERTY RIGHTS AND EASEMENTS

[2.1] Type of Development. This Development is a condominium project within the meaning of Civil Code Section 4125 and shall consist of 130 Condominium units.

[2.2] Condominium/Dwelling Units. Each Owner shall own a fee interest in a Condominium consisting of a separate interest in a Unit as defined in **Section 1.30** and an undivided equal interest in common in the Common Area described in **Section 1.7**. In addition, each Owner shall be a Member of the Mutual. Each of the Units as separately shown, defined and delineated in the Condominium Plans consist of the space bounded by and contained within the interior unfinished surface of the perimeter walls, floors, ceilings, windows and doors of each Unit. Each Unit includes both the portions of the building so described and the air space so encompassed. Bearing walls and all walls containing any utility conduit to the unfinished surface of such walls are specifically excluded.

The Unit and the Common Area appurtenant thereto may not be separated. Any transfer of a Unit automatically shall transfer the Common Area appurtenant thereto regardless of whether the instrument of transfer describes the Common Area. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an interest in the Common Area shall be void unless the Unit appurtenant thereto is also transferred.

[2.3] Common Area Rights. Each Owner or tenant and their family members and guests have nonexclusive rights to use, enjoy, ingress and egress in, to and throughout the Common Area and any Improvements thereon, subject to the provisions of **Section 2.5**.

[2.4] Common Area Ownership. The undivided interest in the Common Area is established and shall continue to be conveyed with each respective Unit. The undivided interest in the Common Area is established and to be conveyed with respective Units and cannot be changed, and Declarant, its successors and assigns and grantees, covenant and agree that the undivided interest in the Common Area and the fee title to the respective Units conveyed therewith shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to that Unit. Each Unit

Owner shall have a 1/130th undivided interest in the Common Areas, which interest shall be conveyed with the respective Unit.

[2.5] Exclusive Use Common Area. The areas designated on the Condominium Plan such as a Balconies, Patios, front entry porches, Garages and Carports are Exclusive Use Common Areas. Subject to the Rules and Regulations of the Mutual, the Balconies and Patios adjacent to Units are reserved for the exclusive use of the Owners of such Units. Unit Owners or occupants shall have the exclusive use of those certain Garages and Carports as specified in Exhibit A to this Declaration. Exclusive Use Common Areas may not be added to, modified or altered without the approval of the Mutual.

[2.6] Encroachment Easement. Each Condominium, or portion thereof, as the dominant tenement has an easement over any other Condominium, or portion thereof, as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, porches, decks, staircases, windows, chimneys or other Condominium building Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, or minor construction changes during the course of construction, and any encroachment authorized under **Section 2.8**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

[2.7] Other Rights. Each Condominium shall be entitled to the benefits and/or subject to the burdens of any easements, rights-of-way, or dedications as may be granted or reserved on the Maps, any deed to the Condominium, or in any other appropriate public record.

[2.8] Appurtenant Rights. Each right or easement described in this **Article 2** is a right or easement that is appurtenant to the Condominium, and any transfer of the Condominium automatically transfers the easement appurtenant thereto regardless of whether the instrument of transfer describes the right or the easement.

[2.9] Reservation of Rights. Notwithstanding any property rights, including easements, described herein, each Condominium is subject to each of the following:

(a) The right of the Mutual's agents to enter any Condominium to cure any violation or breach of this Declaration or the By-Laws or the Rules, provided that at least 30 days prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach;

(b) The right of the Mutual's agents to enter any Condominium to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Condominium;

(c) The immediate right of the Mutual's agents to enter any Condominium in cases of emergency after attempting to contact the unit owner by telephone and e-mail, and

(d) The rights reserved in **Sections 2.8, and 12.8**.

[2.10] Authority Over Common Area. The Board shall have the power and the right in the name of the Mutual and all of the Owners as their attorney-in-fact to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, exclusive use easements or rights, rights-of-way and/or dedications in, on, over or under the Common Area, in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board is in the best interest of the Mutual and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such action and authorizes and appoints the Mutual as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of their Condominium or any Exclusive Use Common Area without the prior written consent of that Owner. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this **Section 2.10** shall require the consent of a majority of the total voting power of the Mutual and such consent of the Mortgagees as may be required by **Article 10**.

[2.11] Delegation of Use Rights. An Owner may delegate his rights of use and enjoyment to the members of his family, guests and tenants. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner rents or leases their Condominium, the Owner, members of the Owner's family, and the Owner's guest shall not be entitled to use any Common Area Improvements. Such rights may be enjoyed by the tenant and the tenant's family members and guests during the term of the rental agreement or lease. Any Owner who rents or leases their Unit must comply with requirements of **Section 3.2**.

[2.12] Restrictions on Partition. The Common Area shall remain undivided, and there shall be no judicial partition thereof except as may be authorized by Civil Code Section 4610 or any successor statute thereto.

ARTICLE 3 - USE RESTRICTIONS

[3.1] Senior Citizen Residential Use. ~~Each Unit shall be occupied and used for senior citizen residential purposes only. Occupants, including Guests, of each Unit shall be used as a private dwelling, and for no other purpose.~~ Units shall be occupied and used for senior citizen residential purposes only. Occupants, including Guests, of each Unit shall be used as a private dwelling, and for no other purpose. ~~subject to age and other purpose restrictions set forth in the Mutual's Rules and Regulations.~~ subject to age and other purpose restrictions set forth in the Mutual's Rules and Regulations. No more than two (2) persons may permanently occupy a one (1) bedroom Unit or no more than four (4) persons may permanently occupy a two (2) bedroom Unit without the Approval of the Mutual.

[3.2] Commercial Use Prohibited. No part of Properties shall be used or allowed or authorized in any way directly or indirectly, for any business, commercial, civil, manufacturing, mercantile, storing, vending, or other such nonresidential purposes except for home offices.

[3.3] Use of Sidewalks. Common Area walkways, stairs and sidewalks are to be utilized for pedestrian ingress and egress from buildings and resident Units. They shall not be obstructed in any manner or used for any other purpose.

[3.4] Nuisance. No activity shall be conducted in any Unit or Common Area that constitutes a nuisance, disturbance of the peace or illegal activity, as governed by California law or unreasonably interferes with the use or quiet enjoyment of the occupants of any other Condominium. Each Unit Owner shall comply with all the requirements of all governmental authorities, federal, state and local, and all laws, ordinances, Rules and Regulations applicable to their Unit.

No noisy, hazardous, noxious, unlawful or offensive condition or activity shall exist or be carried on upon any Unit or portion of the Properties, nor shall anything be done or kept thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Unit.

No Owner shall permit or allow anything to be done or kept upon their Unit or any part or portion of the properties which will potentially increase the rate of insurance thereon or result in its cancellation.

[3.5] No Structural Alterations Permitted. Nothing shall be done in any Unit or in, on, or to any common area building or real property that would structurally change the building or real property, except as is otherwise constructed or approved by the Mutual. No construction of any nature, structural or not, is permitted in the common area except as otherwise constructed or approved by the Mutual. Each owner hereby waives any and all right to allow, approve, reject, or permit all changes, including structural to any common area located within the Mutual's property and hereby delegates such right to the Mutual.

[3.6] Floor Coverings. No change in the type of floor covering materials originally installed in the Units shall be permitted without the Mutual's approval. To reduce sound transmission, second floor Units shall have all floor areas (except kitchens, bathrooms, lavatories, entryways and laundry rooms) covered with carpet and padding or other material that provides equivalent insulation against sound transmission to the Unit below. The Board may adopt further Rules concerning floor coverings that are consistent with the provisions of this Declaration.

[3.7] Parking. Except as permitted by the Mutual, no vehicles other than golf carts and passenger vehicles shall be parked or stored in the common area. All vehicles shall be operable, and no vehicles shall be repaired or rebuilt in the Common Area.

[3.8] Animals. No animals, in excess of three (3) standard household pets, service dogs excluded, shall be kept on the premises. No pet shall be allowed to become a nuisance to the other owners and/or residents. The Owner shall restrict the activities of any pet such that the pet is under the physical control of the Owner at any time the pet is outside of the Unit. The Board may adopt and enforce rules, regulations and penalties regarding the keeping of pets.

Reimbursement Assessments may be imposed for disturbances by pets or other violation of this Declaration or of the Rules and Regulations adopted by the board. Each Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants or invitees for any damage to person or property caused by pets brought upon or kept upon or in the Project by an owner or members of their family, guests, invitees or tenants. Pet owners shall clean up after their pets and properly dispose of their waste.

The Mutual shall specifically have the right to prohibit the maintenance of any pet which, in the opinion of the Board after notice and hearing, constitutes a nuisance to any Unit Owner or Owners.

[3.9] Use, Rental and Leasing of Units. The right to use or occupy a Unit or the sale, lease or other transfer of the right to use or occupy a Unit shall be subject to such uniform or objective standards relating to the financial responsibility and age of the proposed resident as are or may hereafter be set for in the Mutual's governing documents. No short-term rentals of less than (one) 1 month of all or part of a Unit are permitted through Airbnb, VRBO or other similar websites or entities, or by any other rental agreement which include compensation for occupancy rights. Although this is a Senior Citizens Housing Development, there shall be no restrictions based on race, religion, gender or place of national origin.

[3.10] Signs. Except for signs otherwise permitted by decisional or statutory laws, no sign of any kind shall be displayed to the public view on or from any Unit or the Common Area without the prior consent of the Board.

[3.11] Use of the Common Areas. Use of the Common and Exclusive Use Common areas shall be subject to the Mutual's governing documents, including this Declaration. No improvements, excavation or work which in any way alters any common area from its natural or existing state shall be made or done except with the approval of the Mutual. There shall be no waste, obstruction or storage in the Common Areas. Nothing shall be done to increase the rate of or cause the loss of the Mutual's insurance.

No person other than the Mutual or its duly authorized agent shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from, or plant any tree, shrub or other vegetation upon Common Area.

[3.12] Golden Rain Foundation Membership. All Owners shall be members of the Mutual. All natural persons who are members of the Mutual shall also be members of the Foundation and all members of both the Mutual and Foundations shall comply with the terms and conditions set forth in the Articles of Incorporation, Declaration and By-Laws and any rule or regulation of the Mutual or Foundation.

ARTICLE 4 - MAINTENANCE AND REPAIR OBLIGATIONS

[4.1] Owner's Maintenance and Repair Obligations. Except as noted otherwise in this Article, each Owner shall at their sole cost and expense do the following:

(a) Maintenance of Unit. Each Unit Owner shall have the exclusive right at their sole cost and expense to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding their own Unit and the surfaces of bearing walls and partitions within their Unit, and to, at their sole cost and expense, substitute new finished interior surfaces in place of those existing on the walls, partitions, ceilings or floors; subject, however, to **Section [3.6]** of this Declaration entitled Floor Coverings and the Rules and Regulations adopted by the Board.

Each Unit Owner shall maintain their Unit and all Exclusive Use Common Areas in a clean, sanitary and attractive condition and shall also be responsible, whether located within or connected with their Unit, for the maintenance, repair or replacement of:

- windows and doors (whether glass, screen or otherwise)
- all appliances and equipment,
- lighting fixtures
- heating and air-conditioning units, tubing and ducts
- water heaters
- skylights and solar tubes
- fireplaces, flues and spark arrestors
- telecommunications wiring (including internet and Cable TV)
- solar energy systems
- authorized owner structures and equipment located in the Common Area

If an Owner fails to so maintain their Unit or make repairs thereto in such a manner as may be deemed necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project, the Board may do the repairs necessary and charge the Owner for the cost. To the extent there is no immediate need or emergency involved, the Board shall give written notice to the Owner, stating with particularity the work of maintenance and repair which the Board finds to be required, and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. If the Owner fails to carry out the maintenance or repair within the period specified by the notice, the Board shall cause the work to be done and shall assess the cost thereof to the Owner, pursuant to the provisions for Reimbursement Assessments in **Article 6**. The Board shall make emergency repairs to avoid further damage from occurring without said notice, if the Owner does not immediately respond.

(b) Water Pipes/Conduits/Cables. Each Owner is responsible to assure all pipes, wires, conduits, cables, etc., that are located within the Unit are appropriately maintained.

(c) Water Damage. All damages caused by leaking beginning inside a unit are the responsibility of the Owner of the Unit where the leak started, unless it can be determined that the cause originates in the pipes for which the Mutual has responsibility and was outside the Owner's control.

(d) Liability of Owner for Damages. The Owner of each Unit shall be legally liable to the Mutual for all damages to the Common Area or to any improvements thereon including but not limited to, buildings, recreation facilities, landscaping, and fencing caused by such Owner or

any occupant of such Owner's Unit, or visitors, guests, etc. of any Owner/Tenant residing in said Unit. Similarly, each Owner shall be legally liable to the other Owners for the damage originating from their Unit. Charges related to such damage may be assessed as a Reimbursement Assessment in accordance with **Article 6**.

[4.2] Maintenance and Care of Patios and Balconies. Each Owner who is granted an exclusive easement for the use, possession and benefit of any balcony and/or patio, shall landscape, cultivate, maintain, water, fertilize and otherwise care for all containers, planters, plants or landscaping and improvements located within or upon the balcony or patio in a reasonable and good condition. Said Owner shall keep and maintain their balcony and/or patio in a neat, clean, orderly and attractive manner. No Owner shall build or place or cause to be built or placed any shed, doghouse, fence, or other structure or enclosure within their balcony and/or patio without prior written consent of the Mutual. Unless otherwise permitted by the Mutual, the other grounds of the Project, shall be landscaped and maintained by the Mutual, except for damage or injury caused by the negligence or willful misconduct of a Unit Owner, in which events the Unit Owner shall be separately assessed for such damage or injury.

[4.3] Maintenance and Care of Garages. The Mutual shall provide maintenance, repair and replacement of the Garage structure and the exterior surfaces, including the Garage door and tracks. Additionally, the Mutual shall provide periodic painting of Garage exteriors.

[4.4] Maintenance and Care of Carports. The Mutual shall provide maintenance, repair and replacement of Carports and built-in storage cabinets, where present, including the structure and the roof system of the Carport. Additionally, the Mutual shall provide periodic painting of Carport surfaces.

[4.5] Common Area Maintenance, Repair and Replacement Responsibilities. Except as otherwise provided in this Declaration, the Mutual shall maintain, repair and replace all common area components, except members shall maintain their Exclusive Use Common Areas. The responsibility of the Mutual for maintenance, repair and replacement shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of any Owner, his guests, tenants or invitees, the cost of which is not covered by insurance.

(a) Electrical wires from an individual meter up to and including the circuit breaker panel and wiring from the panel to the junction box located in the Unit's walls, floors and ceilings are the Mutual's responsibility except to the extent a third party (like P.G.& E.) is responsible to maintain.

(b) Plumbing within the concrete slab and from the utility mains up to the first joint located within a Unit's structure is the Mutual's responsibility. All subsequent plumbing and fixtures dedicated to an individual Unit is the Owner's responsibility whether located within the Unit or the walls, ceilings or floors of the Condominium.

(c) Exterior repairs required because of termites, pests, other organisms and dry rot are the Mutual's responsibility unless the cause is outside the Mutual's control and within an individual Owner's control (such as dry rot on patios or balconies from overwatering plants, etc.). Interior repairs are the Owner's responsibility.

[4.6] Improvements to Exclusive Use Common Area. Five (5) years after the date of final approval of an authorized improvement to enclose a patio, balcony or attached carport, responsibility for maintenance, repair and replacement of such improvement shall be as defined in **Sections 4.1 or 4.3** as appropriate. Prior to that date the Owner of the condominium is responsible for all maintenance and repair related to the improvement to the extent not covered by insurance proceeds or by warranty.

[4.7] Cooperation and Access. Each Owner and occupant shall fully cooperate with the agents of the Mutual in the performance of the Mutual's maintenance and repair obligations described in **Section 4.5** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Mutual is responsible and access to the Owner or occupant's Condominium as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

[4.8] Reimbursement and Indemnification. If the Mutual incurs or expects to incur any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets, the Mutual shall charge the cost to the Owner of the Condominium responsible for the costs and may levy a reimbursement assessment as described in **Section 6.4**. The Owner immediately shall pay the charge or reimbursement assessment to the Mutual, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 5.6(d)**. The Mutual shall not charge the Owner to the extent that the cost is met through insurance maintained by the Mutual. Any deductible amount shall be paid by the Owner. If the Mutual charges the costs before the costs are incurred, the Mutual shall make an appropriate reconciliation on completion of the work; and any excess funds received shall be repaid to the Owner and any shortfall immediately shall be paid by the Owner. The Mutual may levy a reimbursement assessment to collect the shortfall as described herein.

ARTICLE 5 – WALNUT CREEK MUTUAL THIRTY-NINE (MUTUAL 39)

[5.1] Formation. Walnut Creek Mutual Thirty-Nine (Mutual 39) is a Common Interest Development Association Non-Profit Mutual Benefit Corporation formed under the laws of the State of California for the purposes of managing and administering the affairs of the Project.

[5.2] Governing Body. The governing body of the Mutual shall be the Board. The Board shall be elected as set forth in the Mutual's By-Laws. It shall be the responsibility of the Board to ensure that the Mutual exercises its rights and performs its duties as described within the Declaration, the Articles, the By-Laws and any amendments thereto.

[5.3] Membership. Each Owner of a fee title interest in a Condominium automatically shall be a Member of the Mutual. If there is more than one fee title Owner of a

Condominium, each Owner shall be a Member. The holder of a security interest in a Condominium shall not be a Member of the Mutual except and until that holder obtains both the legal and equitable interest in the Condominium. If any Owner executes an installment contract of sale for the sale of that Owner's Condominium, the purchaser shall become the Member if the contract is recorded in the public records and the Mutual is notified in writing of the contract; and the Owner no longer shall be a Member. If the purchaser's rights are terminated under the contract without transfer of title to the purchaser, the Board, upon receipt of satisfactory evidence of the termination of the purchaser's rights, shall reinstate the Owner as the Member; and the purchaser shall no longer be a Member.

Membership shall be appurtenant to the Condominium and may not be separated therefrom. Any transfer of an Owner's interest in a Condominium (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke their membership for any reason.

[5.4] Voting Rights. The Mutual shall have the following voting membership:

(a) All Owners shall be entitled to one vote for each Condominium in which they own an interest. If more than one Owner owns an interest in a Condominium, only one vote may be cast with respect to that Condominium.

(b) Voting rights shall vest at the time that assessments are levied against the Owner's Condominium. Except as otherwise provided in this Declaration, the Articles or the By-Laws, and subject to the provisions of **Section 5.12**, all matters requiring the approval of the Owners shall be: (i) approved at a duly-called regular or special meeting at which a quorum was present, either in person or by proxy, by Owners holding the majority of the total voting power of all Owners present, either in person or by proxy; (ii) approved by written ballot by a majority of the total voting power of the Owners pursuant to the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Owners.

[5.5] Joint Ownership Votes. The vote that is attributed to each Condominium may not be cast on a fractional basis. If the Condominium has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Condominium is presumed conclusively to be the vote cast by all the Owners of that Condominium. If more than one Owner casts a vote attributed to a Condominium on any matter on which only one vote could be cast for that Condominium, the votes cast by such Owners shall be counted as one vote if the votes are the same; and if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

[5.6] Powers of the Mutual. The Mutual shall have all the powers of a Common Interest Development Nonprofit Mutual Benefit Corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, By-Laws and this Declaration. Mutual shall have the power to do any lawful thing that may be authorized, required or permitted to be done under this Declaration, the Articles and the By-Laws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Mutual, including without limitation, each of the following:

(a) The Board shall establish, fix and levy assessments against the Condominiums and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

(b) The Board may adopt, amend and repeal Rules in conformance with the civil code requirements as it considers appropriate. The Rules shall regulate the use and enjoyment of the Common Area and such other matters as are authorized herein. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner; and a copy shall be posted in a conspicuous place within the Development if an appropriate space is available for such posting. If any provision of this Declaration, the Articles or the By-Laws is inconsistent with or materially alters any Rules, the Declaration, the Articles or the By-Laws shall control to the extent of any such inconsistency.

(c) The Board may borrow money to meet any anticipated or unanticipated costs of the Mutual and, subject to the provisions of **Section 5.13 (e)**, may mortgage, encumber or pledge the Mutual's assets (including, but not limited to, assessments) as security for such borrowing.

(d) In addition to any other enforcement rights described in this Declaration and the By-Laws or as may be authorized by law and subject to any restrictions on the Mutual's enforcement rights, including any due process requirements imposed by this Declaration, the By-Laws or by law, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the By-Laws or Rules: (i) impose monetary penalties, including late charges and interest; and (ii) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 12.10**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Mutual on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Mutual is a party, under such terms and conditions as it considers appropriate.

If the Board adopts a policy imposing monetary penalties, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties. If requested by a Member being disciplined, the Board shall conduct the disciplinary proceeding in executive session. In such session, the Member, and, if applicable, the Member's counsel, and the Mutual's counsel shall be entitled to attend. In addition, the Board may interview witnesses and other appropriate parties to the disciplinary proceeding in executive session. **The provisions of this paragraph are intended to comply with the requirements of Civil Code Sections 5900 through 5920.** Under no circumstances may the Mutual cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Unit on account of the failure of the Owner to comply with the provisions of the Declaration, Articles, By-Laws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Mutual.

Before the Board imposes any monetary penalties (late fees and interest on delinquent assessments are not considered penalties subject to the due process requirements) or suspension of membership rights or Common Area use privileges against any Member for failure to comply with the Declaration, By-Laws or the Rules, the Board must act in good faith and satisfy each of the following due process requirements:

(1) The Member must be given 15 days' prior notice of the discipline to be imposed and the reasons for the imposition of the discipline. Notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the Member as shown on the Mutual's records; and

(2) The effective date of the imposition of the discipline shall not occur until at least 15 days after the Member has been given an opportunity to be heard orally or in writing, by the Board. Members shall have the opportunity to present witnesses on the Member's behalf, to cross-examine any witnesses that may testify against the Member, and to be represented by legal counsel.

(e) Except as may be limited by the By-Laws, the Board may delegate any of the Mutual's powers and duties to its employees, committees or agents, including a professional management agent.

[5.7] Duties of the Mutual . In addition to the duties described in the Articles or By-Laws, or elsewhere in this Declaration, the Mutual shall have the duty to manage the Common Area; perform the maintenance as described in **Sections 4.2, 4.3 and 4.4**; prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 4.5**; prepare and distribute financial statements, reports and copies of Governing Documents as described in **Section 5.12**; enforce bonded obligations as described in **Section 5.13**; levy and collect assessments as described in **Article 6**; prepare when required the reserve studies described in **Section 6.1615** and annually review and implement adjustments as required; and procure, maintain and review the insurance as described in **Article 8**. The Mutual shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, By-Laws, Rules or Board resolutions.

[5.8] Taxes and Assessments. The Mutual shall pay all real and personal property taxes and assessments and all other taxes levied against the Mutual, the Common Area or the personal property owned by the Mutual. Such taxes and assessments may be contested or compromised by the Mutual, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

[5.9] Utility Services and Charges. The Mutual shall acquire, provide and pay water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and other necessary utility services for the Common Area and, if not separately metered or charged, for the Units.

[5.10] Management, Legal, Accounting and Operating Charges. The Mutual may hire and pay for the services of a person or firm to manage the common area, all necessary legal and accounting services as well as any other charges incurred in the operation and administration of the Mutual and the property.

[5.11] Foundation Charges. The Mutual shall pay the Foundation for its services and facilities furnished to the Mutual.

[5.12] Reporting Requirements. The Mutual shall prepare and distribute the following:

(a) A pro forma operating budget for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the fiscal year consisting of at least the following:

(1) Estimated revenue and expenses on an accrual basis;

(2) A summary of the Mutual's reserves based on the most recent reserves review or study conducted pursuant to **Section 6.4615**, which shall be printed in bold type and shall include the following:

(i) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Mutual is obligated to maintain (collectively the "Major Components");

(ii) As of the end of the fiscal year for which the study was prepared:

a. The current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components; and

b. The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and

(iii) The percentage that the amount in **subsection (ii) b** is to the amount in **subsection (ii) a**;

(iv) The current deficiency in reserve funding expressed on per unit basis. This amount shall be calculated based upon Civil Code Section 5565.

(3) A statement as to all of the following:

(i) Whether the Board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

(ii) Whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor.

(iii) The mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.

(iv) Whether the Mutual has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be repaid.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the Major Components; and

(5) A statement describing the Members' rights to obtain copies of the minutes of meetings of the Board of Directors, including a description of how and where these minutes may be obtained.

(i) A summary of the reserve funding plan adopted by the Board as specified in paragraph (5) of subdivision (b) of Section 5550 of the Civil Code.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Mutual's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Mutual. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Mutual shall provide the copy to the Member by first-class United States mail at the expense of the Mutual, which copy shall be mailed within five days of the receipt of the request.

(b) An annual report consisting of a balance sheet rendered as of the last day of the fiscal year, an operating statement for the fiscal year, and a statement of change in its financial position for the fiscal year. A copy of the annual report shall be distributed to each Owner and any Mortgagee that has requested a copy within the 120 days after the close of the fiscal year. In any fiscal year in which the gross income of the Mutual exceeds \$75,000, a copy of the review of the annual report prepared by a licensee of the California State Board of Accountancy in accordance with generally accepted accounting principles shall be distributed with the annual report. If the annual report is not reviewed by an independent accountant, the reports shall be accompanied by the certificate of an authorized officer of the Mutual that the report was prepared from the books and records of the Mutual without independent audit or review.

(c) A statement of the Mutual's policies and practices in enforcing its remedies against Owners for delinquent regular or special assessments, including the recording and foreclosing of liens against a delinquent Owner's Condominium. A copy of this statement shall be annually distributed to each Owner.

(d) Copies of this Declaration, the Articles, By-Laws, Rules and a statement regarding delinquent assessments as described in **Section 6.9** shall be provided to any Owner within ten days of the mailing or delivery of a written request. The Board may impose a fee to provide these materials but not to exceed the Mutual's reasonable costs in preparing and reproducing the material.

(e) A summary of the provisions of Civil Code, Sections 5925 through 5965 which specifically reference the following:

In an enforcement action in which fees and costs may be awarded pursuant to subdivision (c) of Civil Code Section 5975, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

The summary shall be provided either at the time the pro forma budget described in **Section 5.12 (a)** is distributed or in the manner set forth in Corporations Code section 5016.

(f) A summary of the Mutual's insurance for property, general liability, and earthquake (if purchased) and collectively referred as the "Policy" or "Policies" shall be distributed to the Members within 60 days preceding the beginning of the Mutual's fiscal year. The summary shall include the following information on the Policies:

- (1) The name of the insurer;
- (2) The type of insurance;
- (3) The Policy limits of the insurance; and
- (4) The amount of deductibles, if any.

The Mutual, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Mutual receives any notice of non-renewal of a Policy, the Mutual immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed as described in this **Section 5.12 (f)** is specified in the insurance policy declaration page, the Mutual may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary required in this **Section 5.12 (f)** shall contain, in at least 10-point boldface type, the following statement:

This summary of the Mutual's policies of insurance provides only certain information as required by Section 5310(a) (7)) of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any member, upon request and reasonable notice, may review the Mutual's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Mutual maintains the policies of insurance specified in this summary, the Mutual's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or

a portion of any deductible that applies. The Mutual's members should consult with their individual insurance brokers or agent for appropriate additional coverage.

[5.13] Limitations on Authority of the Board. The Board shall not take any of the following actions except with the consent by written ballot pursuant to Corporations Code Section 7513 or any successive statute thereto, of a simple majority of a quorum of more than 50% of the total voting power of the Mutual:

(a) Incur aggregate expenditures for capital Improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Mutual for that fiscal year;

(b) Sell during any fiscal year property of the Mutual having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Mutual for that fiscal year;

(c) Pay compensation to members of the Board or to officers of the Mutual for services performed in the conduct of the Mutual's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Mutual;

(d) Enter into a contract with a third Person to furnish goods or services for the Common Area or the Mutual for a term longer than one year with the following exceptions:

(1) A management contract;

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;

(4) Agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration.

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration; and

(6) A contract for a term not to exceed three years that is terminable by the Mutual after no longer than one year without cause, penalty or other obligation upon 90 days written notice of termination to the other party; or

(e) Borrow money secured by any Mutual assets as authorized under Section 5.6 (c).

[5.14] Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, the Board shall not institute any significant legal proceeding, including any arbitration or judicial reference proceeding, against any Person without providing the Members of the Mutual with at least 30 days' prior written notice of the Mutual's intention to institute legal proceedings. The notice shall describe the purpose of the proceeding, the parties to the proceeding, the anticipated cost to the Mutual (including attorneys' fees) in processing the

proceeding, the source of funds to process the proceeding (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the proceeding is being prosecuted. For purposes herein, 'significant legal proceeding' shall mean any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (a) The levy of a special assessment to fund all or any portion of the proceeding;
- (b) The expenditure of funds from the Mutual's reserves in connection with the proceeding in an amount in excess of 5% of the then current reserves;
- (c) The amount of the claim is in excess of \$25,000; or
- (d) The action could have a material adverse effect on the ability to sell and/or refinance the Condominiums within the Development during the period the proceeding is being prosecuted.
- (e) A meeting will take place to discuss problems that may lead to the filing of a civil action, the time and place of the meeting, and the options, including civil actions that are available to address the problems.

Notwithstanding the foregoing, the notice shall not be required to commence and pursue any action to collect delinquent assessments as described in **Section 6.9**. Furthermore, if the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations or prior to the loss of any other significant right of the Mutual, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Mutual, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

[5.15] Alterations or Additions to Common Area. A proposal for any structural alteration or addition to the community facilities or the Common Areas, other than Exclusive Use Common Area, may be made at any regular or special meeting of the Board and such proposal may be adopted by a majority vote of the Board; provided, however, that if the aggregate expenditure for capital improvements to the Common Area in any fiscal year exceeds five percent (5%) of the budgeted gross expenses of the Mutual for that fiscal year, then such proposal, in accordance with **Section 5.13 (a)**, shall be accepted only upon the affirmative vote by written ballot of Members pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of a quorum of more than 50% of the total voting power of the Mutual. Unless otherwise agreed at the meeting of such Members, the cost of the alteration or addition so approved shall be paid by a special assessment as defined in **Section 6.3** to cover said cost, which shall be shared equally among the Unit Owners.

Any proposals for alterations, additions or other improvements of Exclusive Use Common Area shall be submitted in writing by the Owner proposing such alterations, additions or improvements to the Architectural Committee. Said Committee shall review such proposals to determine whether such proposals would be compatible with the design, construction and standards of quality of the Project and that such proposed improvements would not interfere with

or disturb any other Owner's use or enjoyment of their Unit. Unless otherwise agreed at a meeting of the Members called for such purpose, the cost of an alteration or addition to Exclusive Use Common Area approved by the Architectural Committee shall be paid by the Unit Owner granted exclusive use of such Exclusive Use Common Area. Any proposals for alterations or additions to any portion of the Common Areas of the Project must be authorized and undertaken in accordance to the procedures of **Article 7** of the Declaration.

ARTICLE 6 – ASSESSMENTS

[6.1] Assessments Generally.

(a) **Covenant to Pay Assessments.** Each Owner of a condominium, by acceptance of a deed or other conveyance therefore (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Mutual (i) Regular Assessments, (ii) Special Assessments, and (iii) Reimbursement Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) **Extent of Owner's Personal Obligation for Assessments.** All assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the condominium at the time the Assessment was levied. Each Owner who acquires title to a condominium shall be personally liable only for Assessments attributable to the condominium so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed. Notwithstanding the foregoing, any Owner who takes title to a Condominium on which a lien for a delinquent assessment has been established will take title subject to the lien and the Mutual's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the notice of delinquent assessment and except as provide in **Section 6.10**.

(c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the condominium and shall be a continuing lien upon the condominium against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in **Section 6.9** hereof.

(d) **No Avoidance of Assessment Obligations.** No Owner may exempt themselves from personal liability for Assessments duly levied by the Mutual, nor release the condominium or other property owned by them from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of their condominium or any other portion of the Properties.

[6.2] Regular Assessments.

(a) Preparation of Annual Budget. Not less than 45 nor more than 60 days prior to the beginning of the Mutual's fiscal year, the Board shall estimate the total amount required to fund the Mutual's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all the Mutual Members a budget in accordance with the provisions of **Section 5.12 (a)**. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners by written ballot conducted in accordance with the By-Laws and **Section 6.7** below.

(b) Establishment of Regular Assessment. The total annual expenses estimated in the Mutual's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (a) above, and subparagraph (c) below, the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater (or as otherwise provided by law) than the Regular Assessment for the Mutual's immediately preceding fiscal year without the approval of Owners by written ballot conducted in accordance with the By-Laws and **Section 6.7** below.

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

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

(d) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with **subparagraph (a)**, above, shall be allocated among, assessed against, and charged to each Condominium equally.

(e) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment Roll which shall be maintained and available with the records of the Mutual and shall be open for inspection at all reasonable times by each Owner or their authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Mutual. The Assessment Roll (which may be maintained in the form of a computer printout) shall show for each condominium the name and address of the Owner of Record, all Regular, Special and Reimbursement Assessments levied against each Owner and their condominium, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by **Section 6.9** hereof shall be conclusive upon the Mutual and the Owner of such condominium as to the amount of such indebtedness appearing on the Mutual's Assessment Roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(f) Mailing Notice of Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's condominium, or at such other address as the Owner designates in writing to the Mutual, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 45 days prior to the beginning of the next fiscal year.

(g) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to **Section 6.3 (a) (1)** for that year, shall be assessed against each Owner and their condominium on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Mutual.

(h) Installment Payment of Assessments. The Regular Assessment levied against each Owner and their condominium shall be due and payable in advance to the Mutual in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Mutual's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid by the 15th day of the month in which the Assessment is due.

[6.3] Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in **subparagraph (b)** below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their condominiums for the following purposes:

(1) **Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by **Section 6.2 (a)**, the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Mutual may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this **Section 6.3 (a) (1)** shall be subject to membership approval requirements under the circumstances described in **Section 6.2 (a)**.

(2) **Capital Improvements.** The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e. improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement and repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with **Article 8**.

(b) **Special Assessments Requiring Membership Approval.** No Special Assessments described in (i) **Section 6.3 (a)** hereof, which in the aggregate exceed 5 percent (or as otherwise provided by law) of the budgeted gross expenses of the Mutual for the fiscal year in which the Special Assessment(s) is levied; or (ii) in the last sentence of **Section 6.2 (a)** or otherwise provided by law, shall be made without the assent of Members casting a majority of the votes in favor in a written ballot in accordance with **Section 6.7**, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in **Section 6.2 (c)**.

(c) **Allocation and Payment of Special Assessments.** When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and their condominium in the same manner prescribed for the allocation of Regular Assessments pursuant to **Section 6.2 (d)**, above. The Special Assessment so levied shall be recorded on the Mutual's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in **Section 6.3 (a) (1)** shall be due as a separate debt of the Owner and a lien against their condominium, and shall be payable to the Mutual in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in **Section 6.3 (a) (2)** shall be due as a separate debt of the Owner and a lien against their condominium, and shall be payable in full to the Mutual within 30 days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

[6.4] Reimbursement Assessments.

(a) **Circumstances Giving Rise to Reimbursement Assessments.** In addition to the Special Assessments levied against all Owners in accordance with **Section 6.3**, above, the Board of Directors may impose Reimbursement Assessments against an Owner in any of the circumstances described in **subparagraphs (1) through (3)** below, provided that no Reimbursement Assessments may be imposed against an Owner pursuant to this **Section 6.4** until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to **Section 5.6 (d)** hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Mutual's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Reimbursement Assessments include the following:

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

any portion of the residence structure the Mutual is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of their family, or any of their tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

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

(3) **Required Maintenance on Condominium as more particularly provided in Section 4.1** (and without limiting the generality of that subparagraph). If any condominium is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles, or improper weed or vegetation control, the Mutual shall have the right to enter said condominium, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Reimbursement Assessment against the offending Owner.

(b) **Levy of a Reimbursement Assessment and Payment.** Once a Reimbursement Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in **Section 6.4 (a)**, such Reimbursement Assessment shall be recorded on the Mutual's Assessment roll, notice thereof shall be mailed to the affected Owner and the Reimbursement Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Mutual within 30 days after the mailing of notice of the Assessment.

[6.5] Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the condominium against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

[6.6] Exemption of Certain Properties from Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

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

[6.7] Notice and Procedure for Member Approval. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to **Sections 6.2 and 6.3** of this **Article 6**; a written ballot will be conducted in accordance with Corporations Code section 7513 and the By-Laws. Approval requires favorable votes by a majority of the valid written ballots returned that equals or exceeds the quorum. The quorum required for such membership action shall be a majority of the Members.

[6.8] Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Mutual from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors which has offices located within the State of California. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Mutual as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from the Mutual's accounts shall be subject to the minimum signature requirements imposed by California Civil Code Section 5380 and the By-Laws.

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

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

For purposes of accounting, but without requiring any physical segregation of assets, the Mutual shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to **Section 6.3 (a) (1)** shall be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

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

[6.9] Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Reimbursement Assessment assessed to any Owner is not paid within 30 days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law, pursuant to Civil Code Section 5650, as amended, until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code Sections 5650 and 5600(b) or comparable superseding statutes.

(b) Effect of Nonpayment of Assessments.

(1) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in California Civil Code Section 5650 or comparable superseding statute, the amount of any delinquent Regular or Special or Reimbursement Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the condominium of the Owner so assessed only when the Mutual causes to be recorded in the Office of the County Recorder of the Contra Costa County, a Notice of Delinquent Assessment executed by an authorized representative of the Mutual, setting forth

- (i) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this **Article 6** and California Civil Code Section 5650,
- (ii) the legal description of the Owner's condominium against which the Assessments and other sums are levied,
- (iii) the name of the Owner of Record of such condominium,
- (iv) the name and address of the Mutual,
- (v) and the name and address of the trustee authorized by the Mutual to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Mutual shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(2) Remedies Available to the Mutual to Collect Assessments. The Mutual may initiate a legal action against the Owner personally obligated to pay the delinquent assessment, foreclose its lien against the Owner's condominium or accept a deed in lieu of foreclosure. Foreclosure by the Mutual of its lien may be by judicial foreclosure or by non-judicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code section 2934a. Any sale of a condominium by a trustee acting pursuant to this **Article 6** shall be conducted in accordance with California Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust.

(3) Non-Judicial Foreclosure. Non-Judicial foreclosure shall be commenced by the Mutual by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent with respect to the Owner's condominium and the costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall state the election of the Mutual to sell the condominium or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California Civil Code section 2924c, or comparable superseding statute.

The Mutual shall have the rights conferred by California Civil Code section 2934a to assign its rights and obligations as trustee in any non-judicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said section 2934a, the Mutual shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Mutual shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in non-judicial foreclosure proceedings to act as an agent on behalf of the Mutual in commencing and prosecuting any non-judicial foreclosure hereunder.

The Mutual or its assignee shall mail a copy of the Notice of Default to the Owner or reputed Owner of the subject condominium at the Owner's last address appearing on the books or records of the Mutual, and to any person to whom the giving of a notice of default is required by applicable provisions of California Civil Code section 2924b. Following receipt of the Mutual's notice, the Owner and junior encumbrances shall have reinstatement rights identical to those provided by law for trustors or mortgagors, which rights must be exercised during the period specified by law for reinstatement of obligations secured by deeds of trust.

After the lapse of such time as may then be required by law following the recording of a Notice of Default under a deed of trust, the Mutual or its assignee may give Notice of Sale in the manner and for the period required in the case of deeds of trust. After the giving of the Notice of Sale, the Mutual, or its assignee, without demand on the Owner, may sell the condominium at the time and place fixed in the Notice of Sale, at public auction to the highest bidder. At the Trustee's sale, the Trustee shall have the right to require every bidder to show evidence of their ability to deposit with the Trustee the full amount of their final bid in cash or a bank or savings and loan certified check and to require the last and highest bidder to deposit the full amount of their final bid in cash or a bank or savings and loan association certified check. The Mutual or its assignee may postpone the noticed sale by public announcement at such time and place of sale, and from

time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement.

The Mutual shall deliver to the purchaser after such foreclosure sale the Mutual's deed conveying the condominium so sold, but without covenant or warranty, express or implied. The recitals in such deeds shall be conclusive proof of the truthfulness thereof. Any person, including the Mutual, may bid on the subject property and purchase the same at such sale.

After deducting from the sale proceeds all costs, fees, and expenses incurred by the Mutual, the net proceeds shall be applied to the payment of all sums secured by the Mutual's lien at the time of sale, including interest, costs and attorneys' fees, and the remainder, if any, shall be disbursed to the person or persons legally entitled thereto.

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

[6.10] Transfer of Condominium by Sale or Foreclosure. Except as otherwise provided herein, the sale or transfer of any condominium shall not affect any Assessment lien duly recorded with respect to such condominium prior to the sale or transfer. However, the sale of any condominium pursuant to the foreclosure of any first Mortgage or other mortgage or lien recorded prior to the Mutual's Assessment lien (collectively "prior encumbrance") shall extinguish the lien of such Assessments as to payments which becomes due prior to such sale or transfer. No sale or transfer of a condominium as the result of foreclosure, exercise of a power of sale or otherwise shall relieve the new Owner of such condominium, whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party, from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the first Mortgagee or other purchaser of a condominium obtains title to the same as a result of foreclosure of any such first Mortgage or other prior encumbrance or exercise of a power of sale contained therein, the person acquiring title, their successors and assigns, shall not be solely liable for the Assessments chargeable to condominium which became due prior to the acquisition of title. Instead, such unpaid Assessments shall be deemed to be Common Expenses collectible from the Owners of all of the condominiums, including such acquirer, their successors, and assigns. Furthermore, foreclosure shall not affect the Mutual's right to maintain an action for the collection of delinquent Assessments against the foreclosed party personally.

[6.11] Priorities. When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the condominium prior and superior to all other liens or encumbrances recorded subsequent thereto, except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

[6.12] Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Mutual, rather than being assessed to the condominium, such taxes shall be included in the Regular Assessments imposed pursuant to **Section 6.2** and, if necessary, a Special Assessment may be levied against the condominium in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

[6.13] Assignment of Rents. Each Owner does hereby presently assign to the Mutual, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any condominium owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Mutual pursuant to this Declaration which are in default. The Mutual hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Mutual at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Mutual may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Mutual's rights under this **Section 6.13** shall be subordinate to the rights of any First Mortgagee.

~~**[6.14] Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article 6, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's condominium.~~

~~**[6.15]**~~

[6.14] Delinquent Assessments/Small Claims Court. If a dispute exists between the owner of a separate interest and the Mutual regarding any disputed charge or sum levied by the Mutual, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, enforcement of document costs (including attorney fees) or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the owner of the separate interest may, in addition to pursuing dispute resolution pursuant to Civil Code Section 5900, pay under protest the disputed amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to subdivision (e) of Civil Code Section 5650(b), and commence an action in small claims court pursuant to Chapter 5.5 of Title 1 of the Code of Civil Procedure.

~~**[6.16]**~~ **[15] Reserves and Reserves Study.** Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the Major Components as described in **Section 5.12 (a) (2) (i)** that the Mutual is obligated to maintain and repair. Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or

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maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components which the Mutual is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from reserve fund to the Mutual's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reason that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall be subject to the assessment increase restrictions set forth in **Section 6.3** and Civil Code Section 5605(b).

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Mutual shall notify the Members of that decision in the next available mailing to all Members pursuant to Corporations Code section 5016. The notice shall inform Members of the availability of an accounting of these expenses. The Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed \$25,000, the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Condominium regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components which the Mutual is obligated to repair, replace, restore or maintain as a part of a study of the reserve account requirements of the Development. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study, at a minimum, shall include:

- (a) Identification of the Major Components which the Mutual is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years;
- (b) Identification of the probable remaining useful life of the Major Components identified in **subparagraph (a)** above as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in **subparagraph (a)** above during and at the end of its useful life; and

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study.

As used herein, “reserve accounts” means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those Major Components which the Mutual is obligated to maintain; and “reserve account requirements” means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those Major Components which the Mutual is obligated to maintain.

[6.1716] Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board shall be allocated in equal amounts among the Condominiums. Notwithstanding the foregoing, if any activity within any Condominium results in an increase in the premium for any liability or property insurance maintained by the Mutual, the Board shall use commercially reasonable efforts to determine the portion of the premium allocated to that activity and that portion shall be specially allocated to the Condominium responsible for the activity.

[6.1817] Estoppel Certificate. Within ten days of the mailing order or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Mutual, the Owner or occupant of the Owner's Condominium is in violation of any of the provisions of this Declaration, the Articles, By-Laws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Condominium as provided by this Declaration. The Mutual may charge a fee to provide this information provided the fee shall not exceed the Mutual's reasonable cost to prepare and reproduce the requested items.

ARTICLE 7 - ARCHITECTURAL REVIEW

[7.1] Architectural Review Committee. An Architectural Review Committee (the “Committee”) may be established by the Board. The Committee shall consist of three members. The Board appointees shall be Members of the Mutual. The term of the members shall be as designated by the Board. If a member is removed from the Committee for any reason, the Board shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee.

No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of

the Committee members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Mutual.

The Committee may adopt guidelines regarding the type, location, quality, size, height, material, color and other matters relating to any Improvements or landscaping to be constructed or installed and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in **Article 3**.

Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Condominiums in the Development; (ii) effect of the proposed location on neighboring Condominiums; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Condominiums; (iv) proper facing of elevations with respect to nearby streets and adjoining Condominiums; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines.

[7.2] Approval. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

- (a) Any construction, installation, repair (including exterior painting), replacement, alteration or removal of any common area (including Exclusive Use Common Area), building, outbuilding, structure, wall, fence, sign, trash enclosure, storage area, berms, utilities (gas, electricity, telecommunications, water, or otherwise) or other Improvements;
- (b) Any Common Area planting or landscaping
- ~~(c)~~ ~~(e)~~ — Any placement or storage of building materials or temporary structures e.g. trailers, storage containers, dumpsters etc. ~~); or.)~~
- (d) Any owner-initiated alteration to the interior of the Owner's Unit, except for otherwise permitted under Subsection (a) of Section [4.1] of this Declaration.

Approval shall require the applicant to submit to the Committee plans and specifications in a manner and form satisfactory to the Committee. All plans and specifications shall conform to any guidelines established by the Committee. Plans shall adequately describe the proposed improvements; plot layout; all exterior elevations; materials and colors; signs, landscaping plans (including the type of sodding, seeding, trees, hedges, shrubs and irrigation); storage and dumpster areas; easements and utility locations; proposed temporary fencing; construction schedule; and such other information as the Committee shall require. The Committee, in its sole discretion, may grant variances or exceptions from any guidelines it has established for approving plans and specifications, which variances or exceptions may contain such conditions and time limitations as the Committee deems appropriate.

~~—Notwithstanding anything herein to the contrary, any Owner may repaint the interior of the Owner's Unit in any color the Owner desires or remodel the Unit, provided the remodeling does not in any manner remove or adversely affect any bearing wall, affect the structural integrity~~

~~of the Common Area, alter the exterior appearance of any Condominium Building, or increase the sound transmissions, resonances or reverberations from the Unit to any other Condominium.~~

The Committee may establish reasonable fees to reimburse the Committee for any out-of-pocket costs incurred by the Committee in reviewing plans and specifications, including, if applicable, fees of civil and structural engineers, architects and other design and construction related professionals. Except as paid or reimbursed by the applicant, any costs incurred by the Committee in the performance of its duties shall be paid by the Mutual. If the Committee fails to approve or disapprove any plans or specifications within 60 days of receipt of either the complete plans and specifications or any advance payments required by the Committee, whichever shall occur later, the plans and specifications shall be deemed approved unless a written extension is executed by the Person submitting the plans and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the plans and specifications and/or advance payments and to establish the date of receipt.

Any member of the Committee or any authorized agent of the Committee from time to time and anytime during normal business hours may enter any Condominium for the purpose of inspecting any construction to confirm compliance with the plans and specifications as approved by the Committee. In approving or disapproving any proposed modification, the Committee shall comply with the restrictions contained in **Article 3** and with all federal, State and local building codes and ordinances, including those regulating the rights of handicapped persons.

[7.3] Completion of Work. On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work within 1 year from the date of written approval. If the work is not completed within one (1) year from the date of written approval, or such later date as the Committee shall approve, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

[7.4] Non-Liability. The Mutual, the Committee, the Board, or the other Condominium Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Condominium Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

[7.5] Enforcement. If any Owner or occupant violates the provisions of this **Article 7**, the Mutual, in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

[7.6] Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**.

[7.7] Governmental Approval. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations, including obtaining all necessary governmental permits, including building permits, to proceed with the work. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

ARTICLE 8 – INSURANCE

[8.1] Liability and Fidelity Insurance. The Mutual shall obtain and maintain the following liability policies:

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

(b) **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 or any successor statute thereto.

(c) **Crime Insurance:** A blanket Commercial Crime Insurance Policy covering the Mutual, any organization or person who either handles or administers or is responsible for Mutual funds, whether or not any person receives compensation for services. The policy amounts shall satisfy the Federal National Mortgage Association ("FNMA") and Federal Housing Administration ("FHA") requirements and in no event shall be less than the amounts to satisfy the requirements of Civil Code section 5806 or any successor statute thereto.

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

(a) Property Covered: The Mutual's policy shall cover the following real and personal property:

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

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

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

(b) 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.

(c) Dollar Limit. The dollar limit of the Mutual's policy shall not be less than the full insurable replacement value of the covered property described in **Section 8.2 (a)** above based on insurance industry standards for determination of replacement values, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

(d) Primary. The Mutual's policy shall be primary and noncontributing with any other insurance policy covering the same loss.

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

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

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

The Mutual may enter into a deductible sharing agreement with other Rossmoor Mutuals. In this event, to the extent there is any conflict between the payment of deductibles as set forth in this **Section 8.2 (g)** and the agreement, the agreement shall control.

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

[8.4] Insurance Rating and Cancellation. The insurance company providing the Mutual's insurance under **Sections 8.1 (a) and 8.1 (b)** shall have an A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if approved but not licensed to do business in the State of California, provided that if the Board determines that insurance from insurance companies with the required ratings is not available at commercially reasonable rates, the Board may reduce the rating requirements after consultation with a qualified insurance consultant. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurance rating company used by financial institutions for insurance rating purposes.

[8.5] Board's Insurance Authority. The Board has the authority on behalf of the Mutual and each of its Owners to participate with the Golden Rain Foundation of Walnut Creek or any successor or assign thereto (the "GRF") and other Rossmoor Mutuals in a group policy or policies procured and maintained by GRF as long as the group policy or policies provide equivalent or better coverage than the applicable requirements described in **Section 8.1 (a) and 8.1 (b)** 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 **Article 8** 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 or in any successor statute thereto and as required in **Section 8.1 (c)**. If the Board elects to materially reduce the coverage from the coverage required in **Article 8**, the Board shall, as soon as reasonably practicable, notify the Members, in writing, of the reduction in coverage.

The Board is authorized to negotiate and agree on the value and extent of any loss under

any policy carried by the Mutual, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer. Each Owner irrevocably appoints the Mutual, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Mutual and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

[8.6] Owners' Individual Insurance Requirements. Each Owner shall procure and maintain property insurance against losses to personal property located within the Owner's Unit and personal liability coverage. The Mutual's insurance policies will not provide coverage for: (i) losses to the Owner's personal property; (ii) losses to any Alterations to the extent not covered under **Section 8.2 (a) (ii)**; (iii) liability from accidents or occurrences within the Owner's Unit or portions of the Common Area set aside for the exclusive use or possession of the Residents of the Unit (that is, Exclusive Use Common Area); or (iv) liability from accidents or occurrences within Rossmoor for which the Owner may be held responsible and which may not be covered under the Mutual's Commercial General Liability policy. Each Owner should seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this **Section 8.6** and other applicable coverage available to Owners of Units.

Nothing herein imposes any duty on the Mutual, its Directors, Officers or Agents (including the Mutual's Managing Agent) to confirm or otherwise verify that the Owners are carrying the insurance required in this **Section 8.6**.

No Owner shall separately insure any property covered by the Mutual's property insurance policy described in **Section 8.2** 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.

[8.7] Insurance Trustee. All property insurance proceeds payable to the Mutual under the policy described in **Section 8.2**, whether or not subject to the liens of Mortgagees under **Article 10** or deeds of trust, shall be paid to the Mutual as Trustee for the Owners, the Mutual and their Mortgagees to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

[8.8] Insurance by Tenant. Each Owner who rents or leases out their Unit shall (i) require the tenant to obtain and maintain a "renter's policy" (also known as an "HO-4" policy) to cover tenant's property and provide adequate liability insurance as specified in the Rules and Regulations and (ii) provide to the Board a certificate from the tenant's insurer certifying that the required insurance under this **Section 8.8** 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 a tenant's behalf or verifying that tenants are maintaining the required insurance to cover such tenant's property and provide liability coverage.

[8.9] Additional Insurance

In addition to the policies described in **Sections 8.1 and 8.2**, the Mutual shall obtain and maintain the following insurance:

- (a) Workers Compensation Insurance to the extent required by law;
- (b) Such other insurance as the Board in its discretion considers necessary or advisable.

ARTICLE 9 – DAMAGE, DESTRUCTION OR CONDEMNATION

In the event of damage to or destruction of a Unit and/or the Common Area then all insurance proceeds, whether or not subject to liens of mortgages or deeds of trust, shall be paid to the Mutual as Trustee for the Owners, the Mutual and their mortgagees to be used for rebuilding as follows:

[9.1] Damage to Single Unit. If the Development is damaged by fire or other casualty and damage is limited to a single Unit, any available insurance proceeds from the Mutual's master policy shall be paid to the Mutual in trust for the Owner or Owners of such Unit to rebuild or repair such Unit. Any such repair or rebuilding shall be subject to the provisions of **Article 7**. In the event the insurance proceeds are insufficient to complete such work, the Unit Owner shall pay and advance such additional sums as may be necessary to complete such rebuilding and repair.

[9.2] Damage to Two or More Units or Common Area. If such damage extends to two (2) or more Units or extends to any part of the Common Area, then and in that event:

(a) Proceeds Equal or Exceed 85% of Reconstruction Costs. If the amount of available insurance proceeds is equal to at least eighty-five percent (85%) of the cost of repairing or rebuilding the damaged property to its condition immediately prior to such damage or destruction, the insurance proceeds shall be paid to the Mutual and the Board shall thereupon contract to repair or rebuild the damaged portions of the Development covered under the Mutual's master policy, including the Common Area so damaged unless, within ninety (90) days from the date of destruction, a vote of a majority of the Total Voting Power of the Mutual determines that repair and reconstruction shall not take place.

(b) Proceeds Less than 85% of Reconstruction Costs. In the event that the amount available from such insurance proceeds is less than eighty five percent (85%) of the cost of repairing or rebuilding the damaged property to its condition immediately prior to such damage or destruction, repair and rebuilding may nevertheless take place if, within ninety (90) days from the date of destruction, a majority of the Total Voting Power of the Mutual determines that repair and reconstruction shall take place. If the affected Members approve repair and reconstruction, the Board shall execute, acknowledge and record in the office of the County Recorder not later than one hundred twenty (120) days from the date of destruction a certificate declaring the

intention of the Members to rebuild. Alternatively, the affected Members by vote of a majority of the Total Voting Power of the Mutual may elect to sell the Project.

(c) **Rebuilding Contract.** If a determination is made to rebuild, the Board shall obtain bids from at least three (3) reputable contractors to restore all damaged Units and Common Area in the Development to their condition immediately prior to such damage or destruction. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. The contractor shall provide a completion bond naming the Mutual, and each Owner as beneficiaries.

(d) **Costs to Rebuild/Special Assessment.** The insurance proceeds shall be disbursed to the chosen contractor according to the terms of the contract. The Mutual shall levy a Special Assessment to make up the deficiency, if any, between the total insurance proceeds and the contract price for repair and rebuilding. Member approval of said Special Assessment shall be required in accordance with **Section 6.7** unless the Special Assessment is deemed an “emergency situation” pursuant to Civil Code section 5610. The Special Assessment shall be allocated equally among all Members.

[9.3] Sale of Entire Project or 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.

[9.4] 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 10 – RIGHTS OF AND PROTECTION FOR MORTGAGEES AND TRUST DEED BENEFICIARIES

Notwithstanding contrary or conflicting provisions contained in other Articles of this Declaration:

[10.1] Rights of Mortgagees. The liens created under this Declaration upon any Condominium shall be subject and subordinate to, and shall not affect the rights of the Mortgagee under any recorded First Mortgage upon such Condominium made in good faith and for value, provided that after the foreclosure of any such Mortgage the amount of all regular assessments, and all special assessments to the extent they relate to expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at such foreclosure sale, or his successor, as an Owner after the date of such foreclosure sale, shall become a lien upon such Condominium upon recordation of a notice as provided in this Declaration.

[10.2] Amendment of Declaration. No amendment to these Restrictions shall affect the rights if any Mortgagee who does not join in the execution thereof, provided that prior to the recordation of such amendment his Mortgage has been recorded and written notice of its delivery and recordation, signed by the Mortgagee and Mortgagor, has been given to the Mutual.

[10.3] Subordination. By subordination agreement executed by the Mutual, the benefits of **Sections 10.1 and 10.2** may be extended to Mortgages not otherwise entitled thereto.

[10.4] No Forfeiture. No breach of any covenants and restrictions set forth herein shall cause any forfeiture of title or reversion of bestowing any right of re-entry whatsoever, but, violation of any one or more, of such covenants and restrictions may be enjoined or abated by Declarant, its successors and assigns or any Owner by action of any Court of competent jurisdiction, and damages may also be awarded for such violations; provided however, that any such violation shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said property or any part thereof, but said covenants and restrictions shall be binding upon and effective against any Owner of said property or portion thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

ARTICLE 11 - AMENDMENTS

[11.1] Amendment. This Declaration may be amended or revoked in any respect with the vote by written ballot of at least fifty percent (50%) plus one (1) of the Owners. If the consent or approval of any governmental authority, Mortgagee or other Person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by an officer of the Mutual, and the amendment and certification have been recorded in Contra Costa County.

ARTICLE 12 - MISCELLANEOUS PROVISIONS

[12.1] Headings. Headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

[12.2] Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

[12.3] Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

[12.4] Attorney Fees. If an Owner defaults in their payment of Assessments or is in violation of the governing documents, including this Declaration, and the Mutual hires an attorney to address the default or violation, the Owner covenants and agrees to pay the Mutual any fees or costs it incurs, including attorney fees, whether or not suit is instituted. Owner shall also pay the costs of suit.

[12.5] Access to Books. Any Owner, at any reasonable time and upon reasonable notice to the Board or manager and at the Owner's expense, may cause an audit or inspection to be made of the books and financial records of the Mutual.

[12.6] Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision.

[12.7] Number and Gender. Singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall include the masculine, feminine or neuter as the context requires.

[12.8] Enforcement Rights and Remedies. Covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Condominium in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Mutual or any Owner in any legal or equitable action pursuant to the procedures described herein.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Condominium into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Mutual shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, Mutual shall have the primary responsibility for enforcing the restrictions contained in **Article 3** and the architectural provisions contained in **Article 7**. If any Owner or occupant

desires the Mutual to take any enforcement action, the Owner or occupant shall notify the Mutual in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Mutual nor any director, officer nor agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. The Board shall comply with the due process requirements described in the Civil Code, Corporations Codes and the By-Laws. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear their own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any civil action against the Mutual or any Owner, the Mutual or the Owner bringing the civil action shall comply with the requirements of Civil Code Sections 5925 through 5965 and Section 5975

[12.9] Dispute Resolution Procedure.

Either party to a dispute (the Mutual or an Owner) may invoke the following procedure:

- (1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
- (2) A member of the Mutual may refuse a request to meet and confer. The Mutual may not refuse a request to meet and confer.
- (3) The Mutual's Board of Directors shall designate a member of the board to meet and confer.
- (4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in an effort to resolve the dispute.
- (5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the Mutual.
- (6) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:
 - (i) The agreement is not in conflict with law or the governing documents of the Mutual.
 - (ii) The agreement is either consistent with the authority granted by the board of directors to its designee or the agreement is ratified by the Board of Directors.
- (7) The cost of this form of resolution shall be borne by the Mutual.

[12.10] Internal Dispute Resolution. Before the Mutual or Owner brings an action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than Mutual assessments, not to exceed Five Thousand Dollars (\$5,000), relating to the enforcement of the Governing Documents, the parties shall endeavor to submit the matter to a form of alternative dispute resolution such as mediation or arbitration as provided in Sections 5925 through 5965 of the California Civil Code, or comparable superseding statute. The form of alternative dispute resolution may be binding or non-binding at the option of the parties. Any party to such dispute may initiate this process by serving on another party to the dispute a Request for Resolution (“Request”). The Request shall include (a) a brief description of the dispute between parties, (b) a request for alternative dispute resolution, and (c) a notice that the party receiving the Request is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected. Service of the Request shall be made in the same manner as prescribed for service in a small claims court as provided in Section 116.340 of the Code of Civil Procedure as follows: (1) delivery of the Request to the party in person; or (2) use of substituted service as provided by California Code of Civil Procedure 415.20(a) and (b).

Parties receiving a Request shall have thirty (30) days following service of the Request to accept or reject alternative dispute resolution and, if not accepted within the thirty (30) day period by a party, alternative dispute resolution shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request is served, the alternative dispute resolution shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the Request, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by both parties. A party’s refusal to participate in alternative dispute resolution prior to the filing of a complaint in any action specified in this **Section 12.10** may be considered by a court in determining the amount of attorney’s fees and posts to be awarded to the prevailing party. Further, a filing party’s failure to request alternative dispute resolution may result in the loss of important legal rights. The alternative dispute resolution procedure does not apply if the applicable time limitation for commencing the civil action would run within one hundred twenty (120) days.

Members of the Mutual shall annually be provided a summary of the provisions of this Section, specifically referencing California Civil Code Sections 5925 through 5965 and sequence, or comparable superseding statute, as provided in the By-Laws.

[12.11] Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Mutual. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

[12.12] Notices. Any notice permitted or required by this Declaration, the Articles, By-Laws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage fee prepaid and addressed to the recipient at the address that the recipient has

provided the Mutual for receipt of notice or, if no such address was provided, at the recipient's Condominium address in the Development.

IN WITNESS WHEREOF, the undersigned, being the authorized representative of the Mutual herein, has executed this Declaration this _____ day of _____ 2019.

Walnut Creek Mutual Thirty-Nine (Mutual 39)

By _____

_____, Secretary

Print Name

DRAFT

EXHIBIT A
Mutual Thirty-Nine CC&Rs

BLDG/UNIT	CARPORT NO.	AND/OR	GARAGE NO.
3901-1	9	and	10
3901-2	None		11
3901-3	12		None
3901-4	None		14
3901-5	13		None
3901-6	16	and	15
3902-1	1 *	and	2
3902-2	4	and	3
3902-3	5	and	6
3902-4	8	and	7
3903-1	17	and	18
3903-2	None		19
3903-3	20 *		None
3903-4	None		22
3903-5	21 *		None
3903-6	24	and	23
3904-1	32	and	26
3904-2	31	and	25
3904-3	30	and	27
3904-4	29	and	28
3905-1	49	and	50
3905-2	None		51
3905-3	52 *		None
3905-4	None		54
3905-5	53 *		None
3905-6	56	and	55
3906-1	41	and	42
3906-2	44	and	43
3906-3	45	and	46
3906-4	48	and	47
3907-1	33	and	34
3907-2	None		35
3907-3	36		None
3907-4	None		38
3907-5	37		None
3907-6	40	and	39

EXHIBIT A
Mutual Thirty-Nine CC&Rs

BLDG/UNIT	CARPORT NO.	AND/OR	GARAGE NO.
3908-1	75		None
3908-2	76		None
3908-3	73		None
3908-4	74		None
3908-5	71		None
3908-6	72		None
3908-7	69		None
3908-8	70		None
3909-1	80	and	66
3909-2	79	and	65
3909-3	77	and	67
3909-4	78	and	68
3910-1	84	and	62
3910-2	83	and	61
3910-3	81	and	63
3910-4	82	and	64
3911-1	88	and	58
3911-2	87	and	57
3911-3	86	and	59
3911-4	85	and	60
3912-1	104	and	90
3912-2	103	and	89
3912-3	102	and	91
3912-4	101	and	92
3913-1	93	and	94
3913-2	None		95
3913-3	96		None
3913-4	None		98
3913-5	97		None
3913-6	100	and	99
3914-1	121		None
3914-2	None		122
3914-3	124 *		None
3914-4	None		123
3914-5	125		None
3914-6	None		126
3914-7	128		None
3914-8	None		127

EXHIBIT A
Mutual Thirty-Nine CC&Rs

BLDG/UNIT	CARPORT NO.	AND/OR	GARAGE NO.
3915-1	113	and	114
3915-2	None		115
3915-3	116		None
3915-4	None		118
3915-5	117		None
3915-6	120	and	119
3916-1	105	and	106
3916-2	None		107
3916-3	108		None
3916-4	None		110
3916-5	109		None
3916-6	112	and	111
3917-1	None		138
3917-2	None		137
3917-3	None		139
3917-4	None		140
3918-1	None		134
3918-2	None		133
3918-3	None		135
3918-4	None		136
3919-1	160	and	130
3919-2	159	and	129
3919-3	157	and	131
3919-4	158	and	132
3920-1	156	and	142
3920-2	155	and	141
3920-3	153	and	143
3920-4	154	and	144
3921-1	151	and	146
3921-2	152	and	145
3921-3	149	and	147
3921-4	150	and	148
4301-1	7	and	3
4301-2	8	and	4
4301-3	6	and	2
4301-4	5	and	1
4302-1	10	and	14
4302-2	9	and	13

BLDG/UNIT	CARPORT NO.	AND/OR	GARAGE NO.
4303-1	19	and	17
4303-2	20	and	18
4303-3	12	and	16
4303-4	11	and	15
4304-1	35	and	27
4304-2	36	and	28
4304-3	34	and	26
4304-4	33	and	25
4304-5	31	and	23
4304-6	32	and	24
4304-7	30	and	22
4304-8	29	and	21
4305-1	38	and	39
4305-2	37	and	40
5201-1	1	and	2
5201-2	4	and	3
5201-3	5	and	6
5201-4	8	and	7