

~~MEMBER DRAFT 9-1-17~~

**AMENDED AND RESTATED BYLAWS  
OF  
THIRD WALNUT CREEK MUTUAL**

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**AMENDED AND RESTATED BYLAWS**  
**OF**  
**THIRD WALNUT CREEK MUTUAL**

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**ARTICLE 1**

**NAME AND LOCATION**

The name of the corporation is Third Walnut Creek Mutual, which is hereinafter referred to as the "Mutual." The principal office of the Mutual shall be located in the City of Walnut Creek, Contra Costa County, California or such other place reasonably convenient to the Development as the Board of Directors may from time to time establish.

**ARTICLE 2**

**PURPOSE**

The purpose of the Mutual is to manage, operate, and maintain condominium housing projects located at Rossmoor, Walnut Creek, California.

**ARTICLE 2 ARTICLE 3**

**DEFINITIONS**

Any capitalized term that is not defined below shall have the meaning set forth in Article 1 of the Declaration.

2.43.1 Articles. "Articles" shall mean the Restated Articles of Incorporation of Third Walnut Creek Mutual, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

2.23.2 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, and Reimbursement Assessments, each as is defined in the Declaration.



2.33.3 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Mutual.

2.43.4 Bylaws. "Bylaws" shall mean these Amended and Restated Bylaws of Third Walnut Creek Mutual and any duly adopted amendments thereto.

2.53.5 Civil Code. "*Civil Code*" shall mean the California Civil Code as amended from time to time.

2.63.6 Common Area. "Common Area" shall have the meaning set forth in the Declaration.

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

2.83.8 Condominium Plan. "Condominium Plan" or "Plan" shall mean, collectively, the condominium plans (including any amendments thereto) of the type described in *Civil Code* section 4120 or predecessor statute which apply to the Development and which have been recorded in the Office of the County Recorder of Contra Costa County, California.

2.93.9 Corporations Code. "*Corporations Code*" shall mean the California Corporations Code as amended from time to time.

2.103.10 Declaration. "Declaration" shall mean the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Third Walnut Creek Mutual, recorded in the Office of the County Recorder of Contra Costa County, California, and any duly recorded amendments thereto. The Declaration may also be referred to as the "CC&Rs."

2.113.11 Development. "Development" shall mean all of the real property comprising the Third Walnut Creek Mutual condominium development, as described in the Declaration.

2.123.12 District. "District" shall have the meaning set forth in Section ~~56~~.2.

2.133.13 Foundation. "Foundation" shall mean the Golden Rain Foundation of Walnut Creek, a nonprofit mutual benefit corporation.

2.143.14 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules adopted by the Board and distributed to the Members.

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

2.163.16 Manor. "Manor" and "Unit" are synonymous terms which may be used interchangeably and shall have the meaning set forth in the Declaration.

2.173.17 Member. "Member" shall mean an Owner.

2.183.18 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Mutual who: is current in the payment of all Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents; is otherwise free from sanctions imposed by the Mutual; and is in compliance with all provisions of the Governing Documents. A Member shall be deemed to be in Good Standing unless, after notice and an opportunity for a hearing, the Board has found the Member to be Not in Good Standing and has so notified the Member in accordance with Civil Code section 5855.

2.193.19 Mutual. "Mutual" shall mean Third Walnut Creek Mutual, its successors and assigns.

2.203.20 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Condominium which is a part of the Development.

2.213.21 Project. "Project" shall have the meaning set forth in the Declaration.

2.223.22 Resident. "Resident" shall mean any person who resides in a Unit within the Development whether or not such person is an Owner as defined in Section 23.20, above.

2.233.23 Rules. "Rules" shall mean the rules, regulations and policies governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time, including but not limited to the Senior Housing Rules.

2.243.24 Senior Housing Rules. "Senior Housing Rules" shall mean the residential policy described in Section 4.1 of the Declaration.

2.253.25 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Condominium, excluding any Condominium as to which an Owner is not then a Member in Good Standing.

2.263.26 Unit. "Unit" and "Manor" are synonymous terms which may be used interchangeably and shall have the meaning set forth in the Declaration.

## **ARTICLE 3ARTICLE 4**

### **MEMBERSHIP AND VOTING; FOUNDATION**

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

3.24.2 Membership in the Foundation. Membership in the Foundation and the voting rights and privileges of members of the Foundation shall be as prescribed in the Foundation's governing documents, as amended from time to time. No Owner shall transfer any membership and/or interest in the Foundation except in compliance with the provisions of the Foundation's governing documents. Membership in the Foundation is distinct from membership in the Mutual and shall be as determined by the Foundation.

3.34.3 Relationship to Foundation. The Development is one of several common interest developments (collectively, "the Rossmoor developments") located within a senior citizen housing community known as "Rossmoor." The Rossmoor developments are managed and operated by various associations known within Rossmoor as "mutuals." The mutuals (including Third Walnut Creek Mutual) are beneficiaries under a certain trust agreement. The Foundation is the trustee under the trust agreement. By the terms of the Foundation's articles of incorporation and the trust agreement currently in effect, the primary purpose of the Foundation is to act as trustee with respect to all land and improvements owned by the Foundation and to provide services and furnish community facilities to the mutuals and for the benefit of the residents of the Rossmoor developments. Among other things, the Foundation is required by the trust agreement to collect for the costs of such services and facilities, such costs to be allocated pro rata among the mutuals that are the beneficiaries under the trust based on the number of members of the respective mutual. The portion of these costs of the Foundation

allocable to the Mutual are included as a component of the Annual Assessment imposed by the Mutual, as provided in the Declaration.

3.44.4 Determination of Good Standing Status. A Member may only be determined “Not in Good Standing” after a duly noticed hearing before the Board. A Member’s status shall remain as “Not in Good Standing” until determination by the Board to rescind that status at a hearing requested by the subject Member or at the Board’s discretion.

3.54.5 Delegation of Rights of Use and Enjoyment. There are requirements for any Member to delegate his or her rights of use and enjoyment, including easements, in the Development as provided in Section 3.5 of the Declaration.

## **ARTICLE 4 ARTICLE 5**

### **MEMBER MEETINGS AND VOTING**

4.15.1 Annual Meeting. The Annual Meeting of the Members shall be held annually, on a date and at a time and place to be designated by the Board of Directors, upon proper written notice to all Members.

4.25.2 Special Meetings. Special meetings of the Members, for any lawful purpose, may be called at any time by the President or by a majority of the Board of Directors. In addition, special meetings of Members for any lawful purpose may be called by written request of five percent (5%) or more of the Members or otherwise according to law.

4.35.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by or at the direction of the Secretary or other person authorized to call a meeting. Written notice shall be mailed first class, postage prepaid, or otherwise delivered at least ten (10) days but not more than ninety (90) days before such meeting; *provided, however*, if the notice is given by mail, and the notice is not mailed by first class, registered, or certified mail, that notice shall be given not less than twenty (20) days before the meeting. In the case of a special meeting called pursuant to a written request of Members, notice of such special meeting shall be mailed or otherwise delivered in any manner permitted by law within twenty (20) days after receipt of such written request by the Board, and the date of such special meeting shall be set by the Board and shall be not sooner than thirty-five (35) days nor later than ninety (90) days after the date of the Board's receipt of such written request. Notice of any meetings of the Members may be given by electronic transmission or other method of delivery subject to the requirements set forth in *Corporations Code* section 7511 and *Civil Code* section 4040. Notice of any meeting of Members shall specify the date, hour, and

place of the meeting, and the general nature of those matters which the Board intends to present for action by the Members.

4.45.4 Conduct of Meetings. All meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Mutual may adopt. A reasonable time limit for all Members to speak at a meeting of the Members shall be established by the Board of Directors. Audio and/or video recording of meetings is prohibited, unless permission to record the meeting is obtained in advance in writing from the Board.

4.55.5 Place of Meetings. Annual and special meetings shall be held at a location within the Development or a convenient place outside the Development located as close as reasonably practicable to the Development.

4.65.6 Voting. Members in Good Standing shall be entitled to cast one (1) vote for each Condominium owned or, in the event of a vote to elect Directors, one (1) vote for each open position on the Board, but not more than one (1) vote for each candidate. In the event more than one (1) person owns a given Condominium, the vote for such Condominium shall be exercised as the Owners among themselves shall determine, but in no event shall more than one (1) ballot be returned with respect to any Condominium. If the joint Owners of a Condominium are unable to agree among themselves as to how their vote or votes are to be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Condominium, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of the other Owners of that Condominium. The vote at any meeting of Members may be by a show of hands or by ballot. Votes of the Members on the following issues must be by secret ballot, conducted by means of a double envelope system pursuant to *Civil Code* sections 5100 et seq.: Assessments legally requiring a vote of the Members, election and removal of members of the Board of Directors, amendments to the Governing Documents, or the grant of exclusive use of Common Area property.

4.75.7 Record Date for Voting. The Board of Directors may fix a date not more than sixty (60) days before the date of any mailing or delivery of ballots as the record date for determining Members entitled to vote. Only Members in Good Standing as of the record date shall be entitled to vote. If no record date for voting is set by the Board, Members in Good Standing on the day of the mailing or delivery of ballots or meeting of the Members during which a vote shall be conducted shall be entitled to vote in any election or vote of the Members.

4.85.8 Quorum Requirements. The following quorum requirements must be satisfied in order to take valid action at any meeting of the Members or by written ballot:

4.8.15.8.1 Quorum for Votes on Assessment Increases. With respect to secret written ballots mailed to Members for the purpose of voting on Assessment increases requiring Member approval, the quorum requirement for valid action on the proposal shall be the percentage specified in *Civil Code* section 5605. That quorum percentage is currently more than fifty percent (50%) of the Members of the MutualProject.

4.8.25.8.2 Quorum for Election of Directors and Vote Regarding Excess Income. There shall be no minimum quorum requirement for the election of Directors and/or the vote regarding excess income pursuant to IRS Revenue Ruling 70-604 (or any successor Ruling). With respect to the election of Directors, the number of valid secret written ballots received by the deadline set forth in the ballot and/or the voting instructions shall constitute the quorum for such election, notwithstanding any other quorum requirements set forth in these Bylaws or the Declaration. With respect to the vote of the Members regarding excess income pursuant to IRS Revenue Ruling 70-604 (or any successor Ruling), the number of ballots received by the deadline set forth in the ballot and/or the voting materials or the number of Members in attendance at the meeting at which the vote is conducted shall constitute the quorum for such vote, notwithstanding any other quorum requirements set forth in these Bylaws or the Declaration.

4.8.35.8.3 Quorum for Removal of Directors. With respect to secret written ballots mailed to Members for the purpose of removing a Director or Directors, the quorum requirement for valid action on the proposal shall be a majority (i.e., more than fiftytwenty percent (~~50%~~)20%) of the Total Voting Power of the District represented by that Director or Directors.

4.8.45.8.4 Quorum for Annual Meeting of Members. There shall be no minimum quorum requirement for the Annual Meeting of the Members unless a vote of the Members is required, in which case the quorum requirements set forth elsewhere in this Section 45.8 shall apply.

4.8.55.8.5 Quorum for Votes on Amendments to Bylaws ~~and/or Declaration.~~ With respect to secret written ballots mailed to Members for the purpose of voting on amendments to the Bylaws and/or Declaration, the quorum requirement for valid action on the proposal shall be at least a majority (i.e., more than fiftytwenty-five percent (~~50%~~)25%) of the Total Voting Power of the Mutual.

4.8.65.8.6 Quorum for Valid Action on Other Matters. With respect to a membership meeting called or written ballot distributed for any other purpose, the quorum requirement shall be at least twenty-fiveten percent (~~25~~)10%) of the Members eligible to vote and represented in person at the meeting or by casting a written ballot.

4.95.9 Approval of the Members. If a quorum is achieved in person and/or by ballot, the affirmative vote of a majority of the Members so present and voting on any matter (a Majority of a Quorum) shall constitute the act of the Members, unless the approval of a greater number or proportion of Members is required by any provision of the law or the Governing Documents.

4.105.10 Proxies. The use of proxies in connection with votes of the Members and/or meetings of the Members is expressly prohibited.

4.115.11 Voting by Ballot (*Corporations Code* section 7513).

4.11.15.11.1 Ballot Requirements. Any action which may be taken at a regular or special meeting (and is not required to be conducted by the secret ballot method prescribed by *Civil Code* section 5115) may be taken without a meeting of Members if the Mutual distributes a ballot to every Member entitled to vote and complies with the requirements of *Corporations Code* section 7513. Such ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Mutual.

4.11.25.11.2 Solicitation Rules. The ballot solicitation shall identify both the number of responses needed to meet the quorum requirement and the percentage and/or number of approvals necessary to pass the measure submitted and shall specify the time by which the ballot must be received by the Mutual in order to be counted.

## ~~ARTICLE 5~~ARTICLE 6

### BOARD OF DIRECTORS; ELECTION; TERM OF OFFICE

5.46.1 Number of Directors; Residency Requirement. The affairs of the Mutual shall be conducted by or under the direction of a Board of twelve (12) Directors. The Development has been divided into twelve (12) Districts for the purposes of election of Directors, and each such District is described in Section ~~56.2~~, below, and Exhibit A, attached hereto. One (1) Director shall be elected to serve each of the twelve (12) Districts within the Development. Directors shall be required to reside in the District that they serve ~~except in the following circumstances:~~

~~(a) — In the case of a Director election, when no Member who resides in a specific District has, before the published deadline for nominations, placed his or her name in nomination for election to the Board to represent that District, any Member of the Mutual who satisfies the qualifications of candidates~~

~~set forth in Section 5.3 below may run for and be elected to the Board of Directors to represent such District; and~~

~~(b) — When the Board, in accordance with Section 5.11 below (“Filling Vacancies”), fills a vacancy on the Board of Directors that has occurred due to the disqualification, death, or resignation of a Director, or if the authorized number of Directors is increased, or if the Members fail to elect the full authorized number of Directors.~~

5.26.2 Districts. The Development has been divided into twelve (12) Districts as set forth on Exhibit A, attached hereto.

5.36.3 Qualifications of Directors and Candidates. Directors and candidates for election to the Board (i) must be resident Members in Good Standing; (ii) may not have been declared of unsound mind by a final order of court; and (iii) may not have been convicted of a felony. Co-Owners of one (1) or more Condominiums may not serve on the Board at the same time.

5.46.4 Nomination. Nominations of candidates to the Board of Directors may be made by a nominating committee or by self-nomination. All nominations shall be conducted in accordance with Rules adopted pursuant to *Civil Code* section 5105. The Board may recruit qualified candidates and/or appoint a Nominating Committee prior to any election of Directors. The Nominating Committee, if one is appointed, shall consist of a chairperson, who shall be a Director, and two or more Members of the Mutual. The Nominating Committee may make as many nominations for election to the Board as it deems appropriate.

Any Member who satisfies the qualifications set forth in these Bylaws and Rules adopted pursuant to *Civil Code* section 5105 may place his or her name in nomination for election to the Board of Directors by giving written notice to the Mutual’s managing agent and/or the Board. Notice of self-nomination must be received prior to the published deadline for nominations. Nominations may not be made from the floor at any meeting.

5.56.5 Election. Directors shall be elected annually by secret written ballot in accordance with *Civil Code* sections 5100 through 5135 and Rules adopted pursuant thereto. The Members in Good Standing may cast one vote for each Condominium owned. The persons receiving the largest number of votes shall be elected. Cumulative voting is prohibited. Additionally, write-in candidates shall not be permitted. The method for voting for Directors shall be as set forth in Section 45.6 of these Bylaws. If two or more candidates receive the same number of votes for the last open position on the Board, a runoff election shall be conducted in accordance with *Civil Code* sections 5100 through 5135 and Rules adopted pursuant thereto.



5.66.6 Election by Acclamation. If, as of the published deadline for nominations, the number of qualified candidates nominated does not exceed the number of Directors to be elected, then the individuals nominated and qualified to be elected may be declared elected on a date determined by the Board and the Inspector(s) of Election, in which case written notice of the election results shall be provided to the Members.

5.76.7 Term of Office. The Members shall, in successive years, elect four (4) Directors, for terms of three (3) years each. Each Director shall serve until the expiration of his or her term and thereafter until a successor is elected, or until the earlier disqualification, death, resignation, or removal of such Director.

5.86.8 Removal. Any Director may be removed from the Board, with or without cause, by the affirmative vote of a Majority of a Quorum of the Members of the District which that Director represents, provided the quorum requirement for removal of a Director set forth in Section 45.8.3, above, is satisfied. No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of his or her term of office unless the reduction or amendment also provides for the removal of one or more specified Directors.

5.96.9 Disqualification of Directors. A Director may be deemed ineligible and disqualified from serving on the Board and his or her seat declared vacant under the following circumstances: (i) the person fails within sixty (60) days after receiving notice of election to accept such office, either in writing or by attending a meeting of the Board of Directors as a Director; (ii) the person is absent from three (3) consecutive regular meetings of the Board; and/or (iii) the person is more than sixty (60) days delinquent in the payment of Assessments, fines, penalties or other charges imposed by the Mutual. A Director may also be disqualified and removed from the Board upon a finding of the Board, following a duly noticed hearing, that the Director is not a Member in Good Standing. A Director shall be deemed ineligible and disqualified from serving on the Board under the following circumstances: -(i) the person has been declared to be of unsound mind by a final order of court; or (ii) the person has been convicted of a felony. A Director disqualified under any circumstances set forth in this Section 56.9 shall forfeit his or her seat on the Board. The remaining Director(s) shall appoint a successor as provided herein.

5.106.10 Vacancies. A vacancy shall exist on the Board of Directors in the event of the disqualification, death, resignation, or removal of any Director by the Members, or if the authorized number of Directors is increased, or if the Members fail to elect the full authorized number of Directors. The Board of Directors, by a majority vote of the Directors who meet all of the qualifications for Directors and candidates as set forth in Section 56.3, above, may declare vacant the office of any Director who fails or ceases to meet any required qualification that

was in effect at the beginning of that Director's current term of office. As provided in Section 34.4 of these Bylaws, a Member may only be determined "Not in Good Standing" after a duly noticed hearing before the Board.

Promptly after a vacancy occurs, a letter stating that the Director seat is vacant will be sent from the Mutual Board Services Office to all District Members, encouraging any Member in Good Standing who wishes, to apply to fill the vacancy and providing the details of how to do so. This information will also be published in the community newspaper. The letter shall state a deadline of thirty (30) days from the date of the letter in which to respond to the nomination solicitation. A resigning Director may also make recommendations to the Board regarding candidates to fill a vacant position. Once the notice and self-nomination period has ended, the Board shall meet as soon as reasonably possible to consider filling the vacancy.

5.116.11 Filling Vacancies. Vacancies on the Board created by the removal of a District Director by the Members shall be filled by a vote of the Members of that District. Any other vacancy on the Board of Directors may be filled by vote of the Board of Directors pursuant to Section 6.10, or, if the number of Directors then in office is less than a quorum, by the vote of a majority of the remaining Directors at a meeting of the Board, or by unanimous written consent of the Directors then in office, or by a sole remaining Director. A Director elected or appointed to fill a vacancy shall serve the remainder of the term of office of the Director whom he or she replaces. The Members may elect a Director at any time to fill any vacancy not filled by the Board. If the Board of Directors accepts the resignation of a Director tendered to take effect at a future time, the Board or, if the Board fails to act, the Members may elect a successor to take office when the resignation becomes effective.

5.126.12 Compensation. No Director shall receive compensation for any service he or she may render to the Mutual as a Director. However, upon approval by the Board, any Director may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.

## ~~ARTICLE 6~~ARTICLE 7

### **MEETINGS OF DIRECTORS**

6.47.1 Organizational Meetings. Within thirty (30) days after the election of Directors, the Board of Directors shall hold a meeting for the purpose of organization, appointment of officers, and transaction of other business, as appropriate.

6.27.2 Regular Meetings. Regular meetings of the Board of Directors shall be held at least monthly at a place within the Development or a convenient place

outside the Development, and on a date and at a time as fixed from time to time by resolution of the Board or, upon proper notice which conforms to the provisions of Sections ~~67~~.4 and ~~67~~.5 of these Bylaws, at another place, date and time as set forth in such notice. In the event the Board should reasonably determine that the business to be transacted by the Board does not reasonably justify monthly meetings, then regular meetings of the Board shall be held at such intervals as the Board may determine, but not less frequently than once every three months.

~~6-37.3~~ Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Mutual or by any two (2) Directors.

~~6-47.4~~ Notice to Directors. Except as otherwise provided in Section ~~67~~.2, above, notice of each meeting of the Board shall be communicated to the Directors not less than four (4) days prior to a regular or special meeting and not less than two (2) days prior to a meeting that will be held solely in executive session, provided that shorter notice may be given in the case of an emergency, and provided further that notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting, whether before or after the meeting.

~~6-57.5~~ Notice to Members; Agenda. Except for emergency Board meetings, as defined by law, and Board meetings that will be held solely in executive session, at least four (4) days' prior written notice of the date, time, and place of each meeting of the Board of Directors, whether regular or special, shall be given to all Members. Except for an emergency meeting, Members shall be given notice of the date, time and place of a meeting that will be held solely in executive session at least two (2) days prior to the executive session meeting. Notices of all Board meetings shall be given by general delivery pursuant to *Civil Code* section 4045 and contain the agenda for the meeting.

~~6-67.6~~ Open Meetings. Regular and special meetings of the Board of Directors shall be open to all Members of the Mutual, except when the Board meets in executive session. A reasonable time limit for all Members to speak to the Board shall be established by the Board.

~~6-77.7~~ Teleconference and Remote Participation. All Board meetings may be conducted by teleconference, i.e., where Directors constituting a quorum of the Board, in different locations, are connected by electronic means, through audio or video or both. A Board meeting held by teleconference shall be conducted in a manner that protects the rights of Members and otherwise complies with applicable law. Except for a Board meeting that will be held solely in executive session, the notice of the Board meeting to be held by teleconference shall identify at least one physical location so that Members of the Mutual may attend that portion of the meeting that is open to the Members. At least one Board member or a person

designated by the Board shall be present at the noticed location. Participation by Board members in a Board meeting held by teleconference constitutes presence at that meeting as long as all Board members participating in the meeting are able to hear one another and Mutual Members speaking on matters before the Board. Additionally, the meeting shall be audible to the Members in the location specified in the notice of the meeting.

6-87.8 Executive Session. To the greatest extent permitted by law, including *Civil Code* section 4935, the Board of Directors may meet in executive session to confer with legal counsel or to discuss and/or vote on the following issues: (i) litigation in which the Mutual is or may be involved; (ii) personnel matters; (iii) Member discipline; (iv) the formation of contracts involving the Mutual; (v) upon a Member's request or at the Board's discretion, the Member's payment of Assessments; (vi) a payment plan concerning a Member's payment of Assessments; and (vii) whether to foreclose on a lien for delinquent Assessments. A vote of the Board to initiate foreclosure of a lien for delinquent Assessments shall be taken in executive session, but shall be recorded in the minutes of the next meeting of the Board open to all Members. In any matter relating to the discipline of a Member, the Board shall meet in executive session at the Board's discretion and/or if requested to do so by that Member, and that Member and any other person(s) whose participation is, in the judgment of the Board, necessary or appropriate shall be entitled to attend the executive session.

6-97.9 Restrictions on Board Action Outside of Meeting; Board Meetings Via E-mail. The Board of Directors shall not take action on any item of business outside of a Board meeting. Notwithstanding *Corporations Code* section 7211, the Board shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as a method of conducting an emergency meeting and then only if: (i) all members of the Board, individually or collectively, consent in writing to that action; and (ii) the written consent or consents are filed with the minutes of the meeting of the Board. Written consent to take such emergency action may be transmitted electronically.

6-107.10 Quorum. A majority of the Directors then in office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. Directors may not vote by proxy or be counted toward this quorum requirement by proxy.

6-117.11 Voting by Directors. Pursuant to *Corporations Code* section 7211(c), and subject to the limitations in *Civil Code* section 5350, each Director shall be entitled to one vote and a Director may not vote by proxy or otherwise delegate his or her right to vote on any matter before the Board.

6.127.12 Minutes of Meetings of Directors. Within thirty (30) days after the date of any meeting of the Board, the Board shall make available to the Members either: (i) the minutes of that meeting as adopted by the Board; (ii) those minutes as proposed for adoption which shall be marked to indicate draft status; or (iii) a summary of the minutes. Any matter discussed in an executive session shall be generally noted in the minutes of the immediately following Board meeting that is open to the entire membership. Copies of the minutes, proposed minutes, or summary of minutes of any Board meeting (other than an executive session) shall be provided to any Member of the Mutual upon request and upon reimbursement of the Mutual's costs in providing such copies. Members of the Mutual shall be notified annually in writing of their right to obtain copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

6.137.13 Recording Prohibited. Audio and/or video recording of meetings is prohibited, unless permission to record the meeting is obtained in advance in writing from the Board.

## **ARTICLE 7ARTICLE 8**

### **POWERS OF THE BOARD OF DIRECTORS AND THE MUTUAL**

7.18.1 Powers of the Board. The Board shall have the power to:

7.1.18.1.1 Rules. Subject to *Civil Code* sections 4340 *et seq.*, adopt, publish, amend, repeal, and enforce Rules governing the administration, management, operation, use, and occupancy of the Development.

7.1.28.1.2 Contracts. Authorize any officer or officers to enter into any contract in the name of, or on behalf of, the Mutual. Unless expressly authorized by resolution of the Board, no officer shall have any power or authority to bind the Mutual or to render the Mutual liable for any purpose or on any account.

7.1.38.1.3 Collect Assessments. As addressed in the Declaration, the Board shall have the power to collect Assessments levied by the Mutual by foreclosing the lien against any property for which Assessments are not paid as required by the Declaration and/or by bringing an action at law against the Owner personally obligated to pay the same.

7.1.48.1.4 Sanctions; Hearings; Continuing Violations. Establish and impose monetary penalties (fines) for the infraction of any provision of the Governing Documents, in accordance with a schedule of monetary penalties

adopted by the Board and distributed to all Members, and suspend the voting or other membership rights and privileges of a Member, including but not limited to the right to use Common Area facilities.

When the Board is to meet to consider or impose discipline upon a Member, the Board shall notify the Member, by personal delivery or individual delivery pursuant to *Civil Code* section 4040, at least ten (10) days prior to the meeting. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting. The Board shall meet in executive session if requested by the Member being disciplined or at the Board's discretion. If the Board imposes discipline on a Member, the Board shall provide the Member a written notification of the disciplinary action, by individual delivery pursuant to *Civil Code* section 4040, within fifteen (15) days following the action. A disciplinary action shall not be effective against a Member unless the Board has fulfilled the foregoing requirements.

A Member's rights may be suspended after fifteen (15) days' prior notice of the hearing at which the Board intends to suspend the Member's rights. The hearing to suspend a Member's rights must be conducted at least five (5) days before the effective date of suspension.

In the case of a continuing violation, such as an uncorrected architectural violation, where a Member fails to cease or remedy a violation after notice from the Board to do so, the Board may deem such a continuing violation and may impose separate and successive sanctions for each such violation without holding further hearings for each sanction unless requested by the Member in writing.

7.1.58.1.5 Manager. Engage the services of a manager or management company as either an employee or an independent contractor, and engage such other employees or independent contractors as the Board may deem necessary, and to prescribe their duties.

7.1.68.1.6 Professional Advisors. Consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants, and other professionals in carrying out its authority and responsibility under the Governing Documents and the law, and to pay for such professional services.

7.1.78.1.7 Investment of Reserve Funds. Invest Project reserve funds in prudent investments subject to the provisions of Section 89.7 of these Bylaws.

7.1.88.1.8 Right of Entry. Enter a Unit and Exclusive Use Common Area when necessary, in the Board's sole discretion, as set forth in Article 6 of the Declaration.

7.1.98.1.9 Property Taxes. Pay all real property taxes and assessments levied upon any property within the Development to the extent not separately assessed to the Owners. Provided that any such taxes are paid or that a bond insuring the payment is posted, such taxes and assessments may be contested or compromised by the Mutual prior to the sale or other disposition of any property to satisfy the payment of such taxes.

7.1.108.1.10 Mergers. To the extent permitted by law, participate in mergers and consolidations with other nonprofit organizations organized for the same purposes as this Mutual, provided that any such merger or consolidation shall be approved by the affirmative vote of a Majority of a Quorum of the Members, where a quorum is more than fifty percent (50%) of the Total Voting Power of the Members of the Mutual.

7.1.118.1.11 Termination or Withdrawal of Project from Mutual. To permit termination of any Project's membership in the Mutual on terms which the Board deems fair to the members of the Mutual.

(a) The Owners of any Project may terminate the Mutual membership of every Owner in the Project and transfer Project management to another association by affirmative vote of a majority of the Owners of the Project to approve and carry out a termination agreement that meets the requirements established by the Board.

(b) The Board of Directors shall require, as a minimum, that the Project's termination agreement include provisions for:

(i) Fair election procedures which are in compliance with *Civil Code* section 5100 *et seq.*;

(ii) Release of the Mutual and its directors from liability for past, present, and future landscape and building maintenance obligations;

(iii) Indemnification and defense of the Mutual and its directors related to building and landscape maintenance and any claims arising out of the termination process;

(iv) Establishing an association, adopting articles and bylaws, and electing directors and officers;

(v) A final accounting and transfer of funds from the custody of the Mutual to the new association;

(vi) Essential responsibilities to the Golden Rain Foundation;

(vii) Holding the members responsible for returning all valid Mutual membership certificates, if any, or, in the alternative, attesting that the certificates are lost.

7.4.128.1.12 Mutual Property; Common Area. Subject to the provisions of Articles 2 and 11 of the Declaration, including any required approval of the Members, acquire, own, hold, convey, transfer, dedicate or otherwise dispose of real or personal property consistent with the purposes and powers of the Mutual and the management, administration and operation of the Development or the business and affairs of the Mutual, and grant and convey easements, licenses, and rights of way in, over, upon or under the Common Area.

7.4.138.1.13 Bank Accounts. The Board may open bank accounts and subject to the limitations set forth in Section 4112.2 below, designate signatories upon such bank accounts.

7.4.148.1.14 Borrow Money; Pledge Assets as Security for Loans. The Board may borrow money on behalf of the Mutual and pledge assets of the Mutual as security for loans, except that when Mutual property or Assessment proceeds are to be pledged as collateral, the approval of a Majority of a Quorum of the Members, where a quorum is more than fifty percent (50%) of the Total Voting Power, is required.

7.4.158.1.15 Other Powers and Duties. Exercise for the Mutual all powers, duties, and authority vested in or delegated to the Mutual and not reserved to the Members by other provisions of the Governing Documents, and undertake any action on behalf of the Mutual as the Board shall deem necessary or proper in furtherance of the purposes and powers of the Mutual and/or the interests of the Mutual and its Members.

7.28.2 Limitation on Powers. The powers of the Board shall be subject to the limitations set forth in the Declaration.

7.38.3 Indemnification. The Mutual shall have the power to, except with respect to intentional, wanton, or grossly negligent acts, indemnify and hold harmless, to the maximum extent permitted by California law, each person who is or at any time was a Director, officer, Inspector of Election, employee, or agent of the Mutual or member of any committee appointed by the Board from and against



any and all claims, liabilities, expenses, judgments, fines, settlements, actually and reasonably incurred by any such person, and to which any such person shall become subject by reason of his or her being a Director, officer, inspector of election, employee, or agent of the Mutual or member of any committee appointed by the Board.

## ARTICLE 8 ARTICLE 9

### DUTIES OF THE BOARD OF DIRECTORS

8.49.1 Records and Minutes. The Board shall cause to be kept a complete record of all its acts and the corporate affairs, including an accurate and current record of the Members setting forth their names and addresses, adequate and correct books and records of account, and minutes of the proceedings of the Members, the Board, and committees of the Board, and to present a statement thereof to the Members at the Annual Meeting of the Members.

8.29.2 Supervision. The Board shall supervise all officers, agents, and employees of the Mutual, and see that their duties are properly performed.

8.39.3 Insurance. The Board shall procure and maintain adequate casualty, liability and other insurance on Common Area property, and other appropriate insurance, as the Board deems necessary and appropriate.

8.49.4 Enforcement of Governing Documents. The Board shall enforce the provisions of the Governing Documents, as more particularly set forth in the Declaration, and perform all acts required of the Board under the Governing Documents or required by law.

8.59.5 Reserve Study and Annual Review. The Board shall cause to be conducted, at least once every three (3) years, a reasonably competent and diligent visual inspection of the accessible areas of the major components which ~~the Mutual~~ each Project is obligated to repair, replace, restore or maintain as part of a study of the reserve account requirements of the Development ~~if the current replacement value of such major components is equal to or greater than one-half (1/2) of the Mutual's reserve account for that period.~~ The Board shall review, or cause to be reviewed, the reserve 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 reserve study required by this Section shall include the minimum requirements specified in *Civil Code* section 5550.

8.69.6 Reserve Funds. The Board shall not expend funds designated as reserve funds for any purpose other than the maintenance, restoration, repair, or replacement of, or litigation involving the maintenance, restoration, repair, or

replacement of, major components which the Mutual is obligated to maintain, repair, or replace and for which the reserve fund was established. However, the Board may authorize a temporary transfer of money from a 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 meeting minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. Any such transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except as otherwise expressly provided by law. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account.

8.79.7 Investment of Reserve Funds. The Board shall manage and invest Project reserve funds in a prudent manner designed to achieve the primary objective of preserving principal ~~while realizing a reasonable return~~ and to assure the availability of funds as they are needed based upon the most recent reserve fund study obtained by the Board as provided in these Bylaws and by law. Reserve funds shall be deposited in federally insured depositories.

8.89.8 Review of Accounts. The Board shall review the Mutual's operating account and the Projects' operating and reserve accounts at least in accordance with the following minimum requirements:

(a) Review a current reconciliation of the Mutual's and Projects' operating accountaccounts on at least a quarterly basis;

(b) Review a current reconciliation of the Projects' reserve accountaccounts on at least a quarterly basis;

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget;

(d) Review the latest account statements prepared by the financial institutions where the Mutual or Project keeps its operating and reserve accounts; and

(e) Review an income and expense statement for the Mutual's and Projects' operating and reserve accounts on at least a quarterly basis.

As used in this Section, the term "reserve account" shall mean monies that the Board has identified in its annual budget for use to defray the future costs of repair or replacement of, or additions to, those major components which the Projects are obligated to maintain, restore, repair or replace.

8.99.9 Notice and Collection of Assessments. As more fully provided in the Declaration, the Board, on behalf of the Mutual and each Project, shall: (i) send written notice to each Owner in advance of each fiscal year of the Annual Assessment levied against his or her Condominium for that fiscal year; and (ii) collect Assessments levied by the Mutual by foreclosing the lien against any property for which Assessments are not paid as required in the Declaration and/or by bringing an action at law against the Owner personally obligated to pay the same.

8.109.10 Certificate of Payment of Assessments. The Board shall issue, or cause an appropriate officer to issue, upon demand by any proper person, a certificate setting forth whether any Assessment has been paid. A reasonable charge may be imposed by the Board for the issuance of such certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment.

8.119.11 Annual and Periodic Notices and Disclosures. The Board, on behalf of the Mutual, shall distribute to the Members, other persons and/or entities all notices and disclosures when and as required by law. Any notice or disclosure that is required by law to be provided by the Mutual or the Board to the Members or to any other person or entity may be delivered in any manner permitted by law for such notice or disclosure.

8.129.12 Results of Member Votes. The Board shall disclose results of Member votes in accordance with Rules adopted pursuant to *Civil Code* sections 5100 through 5135 for all elections subject to those Rules. For all other elections, for a period of sixty (60) days following the conclusion of an annual, regular, or special meeting of Members, upon written request from a Member, the Board shall promptly inform the Member of the result of any particular vote of the Members taken at the meeting, including the number of votes for, votes against, and abstentions.

8.139.13 Duties of District Directors. Additional duties of the District Directors beyond those stated in this Article ~~89~~ shall be as set forth in the Mutual's Policies.

## **ARTICLE 9ARTICLE 10**

### **OFFICERS AND THEIR DUTIES**

9.110.1 Enumeration of Officers. The officers of the Mutual shall be a President, Vice President, Secretary, and a Treasurer, who shall at all times be members of the Board of Directors, and such other officers as the Board of Directors may, from time to time, appoint by resolution.

9.210.2 Appointment of Officers. The appointment of officers by the Board shall take place at the first meeting of the Board of Directors following the annual election of Directors.

9.310.3 Term. The officers of the Mutual shall be appointed annually by the Board, and each shall hold office for one (1) year, unless he or she shall sooner resign, be removed by the Board, or otherwise be disqualified to serve.

9.410.4 Special Appointments. The Board may appoint such other officers as the affairs of the Mutual may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

9.510.5 Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.610.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces, subject to the Board's right to remove an officer.

9.710.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 9.4 of this Article.

9.810.8 President. The President shall be the chief executive officer of the Mutual and shall, subject to control of the Board of Directors, have general supervision, direction, and control of the affairs and the other officers and the employees and agents of the Mutual. The President shall preside at all meetings of the Members and at all meetings of the Board of Directors, shall have the general powers and duties of management usually vested in the office of the President of a California homeowners association, and shall have such other powers and duties as may be prescribed by the Board of Directors and the Bylaws subject, however, to any limitations contained in the Declaration.

9.910.9 Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President and, when so acting, shall have all of the powers of, and be subject to all of the restrictions upon, the

President. The Vice President shall have such other powers and perform such other duties as, from time to time, may be prescribed by the Board of Directors.

~~9.40~~10.10 Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board of Directors may prescribe, a book of minutes of all meetings of Directors, Members, and committees of the Board formed pursuant to *Corporations Code* section 7212 setting forth the time and place of holding of such meetings; whether regular or special, and if special, how authorized; the notice thereof given; the names of those present at Directors' or committee meetings; the number of memberships and votes present or represented at Members' meetings; and all the proceedings thereof. The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors required by the Bylaws or by law to be given and shall maintain a proper record of the giving of such notice, and shall keep the books, records, and documents of the Mutual in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

~~9.44~~10.11 Treasurer. The Treasurer shall be responsible for the receipt and deposit in appropriate accounts of all monies of the Mutual and Projects, and shall cause disbursement of such funds as directed by resolution of the Board of Directors; may sign all checks and promissory notes of the Mutual; shall keep proper books of account; shall cause an annual review of the Mutual's books and financial statements to be made by a public accountant at the completion of any fiscal year for which such review is required by law or as determined by the Board; shall assist the Board in preparation of an annual budget and a statement of income and expenditures to be presented to the Members of the Mutual as provided by law; and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.

~~9.42~~10.12 Delegation of Duties. The ~~officers of the Mutual Board~~ shall have the authority to delegate their duties to the managing agent, as the Board deems appropriate.

## ~~ARTICLE 10~~ARTICLE 11

### COMMITTEES

The Board may appoint an Architectural Review Committee, ~~Architectural Control Committee~~ as provided in Article 7 of the Declaration and a Nominating Committee as provided in Section ~~56~~.4 of these Bylaws. The Board may also appoint such other committees as it deems appropriate in carrying out the powers and purposes of the Mutual. The Board shall appoint all of the Members of any committee created by the Board and said committee Members shall serve at the

pleasure of the Board. Any “committee of the Board” (that is a committee consisting only of Directors, as referred to in *Corporations Code* section 7212) shall consist of at least two (2) Directors, and shall have such powers and duties as the Board shall determine, subject to the limitations of *Corporations Code* section 7212.

## ~~ARTICLE 11~~ARTICLE 12

### **BOOKS, RECORDS AND FUNDS**

11.412.1 **Mutual Records.** In accordance with *Civil Code* sections 5200 *et seq.*, the Mutual shall make Mutual records available for inspection and copying to a Member or Member’s designated representative upon written request. If the Member requests the membership list, he or she shall state, in writing, the purpose for which the list is requested, which purpose shall be reasonably related to such Member’s interest as a Member of the Mutual. Mutual records, and any information from them, may not be sold, used for commercial purpose, or used for any other purpose not reasonably related to a Member’s interest as a Member. The Mutual may bill the Member who has requested documents the direct and actual costs incurred by the Mutual to copy and mail any requested documents. The Board may adopt and publish reasonable Rules establishing procedures relating to Members’ inspection and copying of Mutual records.

11.212.2 **Checks, Drafts, and Evidences of Indebtedness.** All checks, drafts, or other orders for payment of money, or notes or other evidences of indebtedness issued in the name of, or payable to, the Mutual or Project shall be signed or endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board, and in the manner as specified by the Board of Directors, provided that the signatures of at least two (2) persons, who shall be the Directors, or one (1) officer who is not a Director and one (1) who is a Director, shall be required for the withdrawal of funds from a Project’sProjects reserve account.

11.312.3 **Funds and Deposits.** Any funds of the Mutual or Project shall be deposited to the credit of the Mutual in such banks or other depositories as the Board of Directors shall, from time to time, determine.

11.412.4 **Fiscal Year.** The fiscal year of the Mutual shall be as determined by resolution of the Board of Directors.

## ~~ARTICLE 12~~ARTICLE 13

### **AMENDMENTS**

~~12.1~~13.1 Amendment by the Members. These Bylaws may be amended by the affirmative vote of a Majority of a Quorum of the Members. For purposes of the preceding sentence, a Quorum shall mean a majority (i.e., more than fifty percent (50%)) of the Total Voting Power, as set forth in Section ~~45~~8.5 of these Bylaws.

~~12.2~~13.2 Amendment by the Board of Directors. The Board of Directors may, by a majority vote of all Directors then in office, adopt amendments to these Bylaws when an amendment is needed to conform a particular provision or provisions of the Bylaws to changes in applicable California statutory law that are nondiscretionary in nature. Before entertaining a motion to approve any such amendment(s), the Board shall receive a written opinion from an attorney licensed to practice law in the State of California confirming that a change or changes in California statutory law necessitates a corresponding amendment to these Bylaws to conform to the statutory requirements, which the Mutual is bound by law to follow.

## ~~ARTICLE 13~~ARTICLE 14

### MISCELLANEOUS

~~13.1~~14.1 Conflict Between Governing Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the case of any conflict between the Rules and these Bylaws, these Bylaws shall control.

~~13.2~~14.2 Amendment to Referenced Statutes. References in these Bylaws to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes.

~~13.3~~14.3 References to the Declaration. These Bylaws were presented with the ~~Amended and Restated~~Master Declaration of Covenants, Conditions and Restrictions of Third Walnut Creek Mutual for approval by the Members. In the event the Members approved adoption of these Bylaws but did not approve the adoption of the Amended and Restated Declaration of Covenants, Conditions and Restrictions, any references to specific sections of the Declaration in these Bylaws shall be null and void unless and until the Declaration of Covenants, Conditions and Restrictions is adopted.

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**CERTIFICATE OF AMENDMENT  
TO  
BYLAWS  
OF  
THIRD WALNUT CREEK MUTUAL**

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I, the undersigned, hereby certify that:

I am the Secretary of Third Walnut Creek Mutual.

The foregoing Amended and Restated Bylaws of Third Walnut Creek Mutual were duly approved by the requisite vote of the Members of the Mutual on the [redacted] day of [redacted], 20[redacted].

The Amended and Restated Bylaws of Third Walnut Creek Mutual supersede all previously-effective Bylaws of Third Walnut Creek Mutual, including but not limited to the AMENDED AND RESTATED BYLAWS OF THIRD WALNUT CREEK MUTUAL certified on [CERTIFICATION DATE].

Executed this [redacted] day of [redacted], 20[redacted].

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[insert name as will sign], Secretary



**EXHIBIT A**

**DISTRICTS**

<b>District #</b>	<b>Projects in District</b>	<b>Number of Units</b>
III	49, 54	140
IV	26, 35	134
V	23, 33, 53	127
VII	51	124
VIII	50, 55	176
IX	45	148
X	42, 44	120
XI	40, 41	186
XII	39	130
XIII	34, 38, 64	103
XIV	36, 37	174
XV	27, 31, 32	114