

**RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:**

WALNUT CREEK MUTUAL NO. FIFTY-NINE

c/o Hughes Gill Cochrane, P.C.
Attn: Stephanie J. Hayes, Esq.
1600 South Main Street, Suite 215
Walnut Creek, CA 94596

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder

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**FIRST AMENDMENT TO AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
WALNUT CREEK MUTUAL NO. FIFTY-NINE**

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

RECITALS

A. WHEREAS, an instrument entitled "Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Fifty-Nine" was recorded on February 21, 2007 as Document No. 2007-0051690 in the Official Records of Contra Costa County, California (the "Declaration").

B. WHEREAS, the Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in those certain parcels of real property located in the City of Walnut Creek, Contra Costa County, State of California and described as follows:

Lot 1 and Lot 2 as shown on that certain Map of Subdivision 7169, Mutual 59, filed on July 29, 1992 in Book 362 of Maps at Pages 24 through 27, in the Official Records of Contra Costa County.

C. WHEREAS, all of the real property described herein, including all improvements thereon, constitute a "condominium project" within the meaning of California Civil Code section 1351(f).

D. WHEREAS, the Mutual desires to amend the Declaration as set forth below.

E. WHEREAS, pursuant to Article 12.1 of the Declaration, the Declaration may be amended with the approval of Members representing at least a majority of the Total Voting Power of the Mutual.

F. WHEREAS, all approvals required to amend the Declaration have been obtained.

NOW, THEREFORE, the Mutual amends the Declaration as set forth in this First Amendment.

1. Section 10.1 of the Declaration (entitled "Owner Responsibility for Contents Insurance") shall be deleted in its entirety and the following Section 10.1 (entitled "Damage to a Unit or Units") shall be inserted in its place:

10.1 Damage to a Unit or Units. As set forth in Section 9.6 of the Bylaws, each Unit Owner is responsible for insuring the contents of his or her Unit. Regardless of the insurance carried by the Unit Owner, damage to or destruction of the contents of the Unit from a property or casualty loss shall be the complete and total responsibility of the Unit Owner. If damage occurs to property within the Unit that is insured by the Mutual pursuant to Section 9.2.1(ii) of the Bylaws, the insurance proceeds shall be paid to the Mutual, and the Mutual shall use same to rebuild or repair such property. In the event the insurance proceeds and available Mutual funds are insufficient to cover the complete cost of repair of such property, the Board shall levy a Special Assessment against all Owners in the amount necessary to complete the repairs to the damaged property.

2. Section 10.2 of the Declaration (entitled "Property within a Unit but Insured by the Mutual's Policy") shall be deleted in its entirety.

3. Unless otherwise expressly provided herein to the contrary, capitalized terms not defined in this First Amendment shall have the meanings ascribed to them in the Declaration, unless the context clearly requires otherwise.

4. In all other respects the provisions of the Declaration are deemed to remain in full force and effect except as herein modified.

IN WITNESS WHEREOF, the undersigned duly authorized officers of WALNUT CREEK MUTUAL NO. FIFTY-NINE hereby certify that this First Amendment has been approved, in accordance with Section 12.1 of the Declaration, by Members representing at least a majority of the Total Voting Power of the Mutual.

WALNUT CREEK MUTUAL NO. FIFTY-NINE

Dated: 5/29, 2012

By: Mary Jane Hargrove
Mary-Jane Hargrove, President

Dated: 5/30, 2012

By: Victor Vigil
Victor Vigil, Secretary

ACKNOWLEDGMENT

STATE OF CALIFORNIA

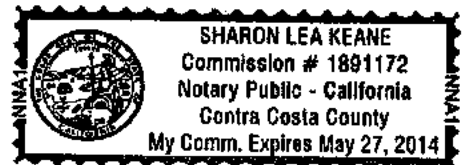
COUNTY OF Contra Costa

On 5-29-12, before me, Sharon Lea Keane, Notary Public, personally appeared, Mary Jane Hargrove, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharon Lea Keane (Seal)



ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Contra Costa

On 5-30-12, before me, Sharon Lea Keane, Notary Public, personally appeared, Victor Vigil, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharon Lea Keane (Seal)



End of Document



ROSSMOOR
WALNUT CREEK

Walnut Creek Mutual No. Fifty-Nine

Agreement Establishing C C & R's & Covenants, Conditions and Restrictions

If these documents contain any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates State and Federal Fair Housing Laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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Alamo, CA 94507



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AGREEMENT TERMINATING

AGREEMENTS ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WALNUT CREEK MUTUAL 59, TRACT 5169

A. WHEREAS, that certain "Agreement Establishing Covenants, Conditions and Restrictions for Walnut Creek Mutual 59, Tract 7169" was recorded on August 18, 1992, in Book 1775, at Pages 962 through 979, as Instrument Number 92-206914, in the Office of the County Recorder of Contra Costa County, and

B. WHEREAS, that certain "Agreement Establishing Covenants, Conditions and Restrictions for Walnut Creek Mutual 59, Tract 7169, Lot 2" was recorded on November 5, 1993, as Instrument Number 93-314428, in the Office of the County Recorder of Contra Costa County (both agreements hereinafter referred to collectively as the "Establishing Agreements"), and

C. WHEREAS, the property covered by the Establishing Agreements is as follows:

Lot 1 and Lot 2 as shown on that certain Map of Subdivision 7169, Mutual 59, filed on July 29, 1992, in Book 362 of Maps at Pages 24 through 27, in the Official Records of Contra Costa County,

and

D. WHEREAS, section 13, paragraph (B) of each of the Establishing Agreements provides that the Establishing Agreements may be terminated by the Golden Rain Foundation of Walnut Creek, a California corporation (the "Foundation") and three-fourths (3/4) of the record owners of the fee simple title to the property covered by the Establishing Agreements, and

E. WHEREAS, the owners of the fee simple title to the property covered by the Establishing Agreements constitute the membership of Walnut Creek Mutual Fifty-Nine, a California

nonprofit mutual benefit corporation and the "association" for the property as defined in Civil Code section 1351(a) (the "Association"), and

F. WHEREAS, the board of directors of the Foundation has approved the termination of the Establishing Agreements and the members of the Association, by the vote of owners of more than 3/4 of the fee simple title to the property covered by the Establishing Agreements, have voted to terminate the Establishing Agreements,

NOW, THEREFORE, it is hereby declared that, upon the recordation hereof, the Establishing Agreements and each of them is hereby terminated.

IN WITNESS WHEREOF, each of the undersigned does hereby affirm that he or she is authorized to execute this instrument for the Foundation or for the Association on behalf of the owners of the fee simple title to the property covered by the Establishing Agreements, respectively.

GOLDEN RAIN FOUNDATION OF WALNUT CREEK,
a California nonprofit mutual benefit corporation

By: [Signature]
(signature)

DAVID H. SMITH, PRESIDENT
(print name & title)

By: [Signature]
(signature)

DIANE C. MADEN, SECRETARY
(print name & title)

WALNUT CREEK MUTUAL FIFTY-NINE,
a California nonprofit mutual benefit corporation

By: [Signature]
Kelvin Booty, President

By: [Signature]
~~Cressa Bent~~, Secretary
Sara Cornell

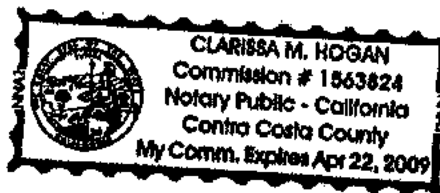
CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF Contra Costa) ss.

On 2-13-07, before me, Clarissa M. Hogan Notary Public,
personally appeared David H. Smith, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

WITNESS my hand and official seal.

Signature Clarissa M. Hogan (Seal)

051689

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

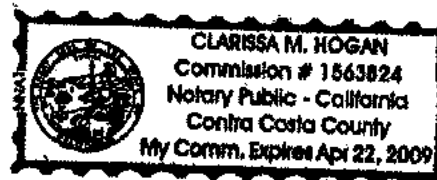
Contra Costa

) ss.
)

On 2-12-07, before me, Clarissa M. Hogan Notary Public,
personally appeared Diane C. Madex, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

WITNESS my hand and official seal.

Signature Clarissa M. Hogan (Seal)



CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

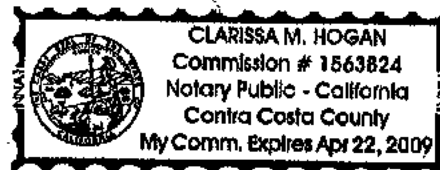
COUNTY OF Contra Costa) ss.

On 12-21-06, before me, Clarissa M. Hogan Notary Public,
personally appeared Kevin Booty, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

WITNESS my hand and official seal.

Signature Clarissa M. Hogan (Seal)

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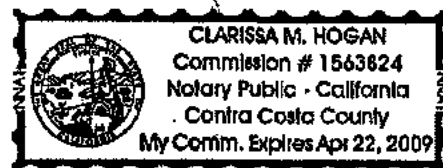
CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF Contra Costa)

On 12-21-06, before me, Clarissa M. Hogan Notary Public,
personally appeared Sara Cornell, personally known
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.

Signature Clarissa M. Hogan (Seal)



END OF DOCUMENT



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

This Amended Declaration of Covenants, Conditions and Restrictions is made on the date set forth at the end of this document by WALNUT CREEK MUTUAL NO. FIFTY-NINE, a California nonprofit mutual benefit corporation (referred to in this document as the "Mutual").

RECITALS OF BACKGROUND FACTS; DECLARATIONS

A. The Mutual is the successor in interest to Terra California limited partnership, an Illinois limited partnership, and UDC Homes, Inc., a Delaware corporation which, as Declarants executed certain declarations of covenants, conditions and restrictions, amendments thereto, and certain agreements for Walnut Creek Mutual No. Fifty-Nine Phase I and Phase II, respectively, as set forth in Exhibit A (collectively referred to in this document as the "Original Declaration").

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

Lot 1 and Lot 2 as shown on that certain Map of Subdivision 7169, Mutual 59, filed on July 29, 1992 in Book 362 of Maps at Pages 24 through 27, in the Official Records of Contra Costa County.

C. The Members, constituting at least three-fourths (3/4) of the Members of the Mutual, desire to amend, modify, and otherwise change the Original Declaration pursuant to Article XVI, paragraph 1 thereof, and do hereby declare that the Original Declaration be and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 59.

- D. IT IS HEREBY DECLARED that all of the real property described in Recital Paragraph B constitutes a Condominium Project within the meaning of section 1351(f) of the California *Civil Code*.
- E. IT IS FURTHER HEREBY DECLARED that all of the real property described in Recital Paragraph B is and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions set forth herein, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.
- F. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions set forth herein shall constitute enforceable equitable servitudes as provided in *Civil Code* section 1354, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or the owner or holder of any interest or estate therein and their heirs, successors, and assigns.

ARTICLE 1 DEFINITIONS

- 1.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including but not limited to interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Mutual in collecting and/or enforcing payment of Assessments.
- 1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 8.7.
- 1.3 Articles. "Articles" shall mean the Amended Articles of Incorporation of Walnut Creek Mutual No. Fifty-Nine, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.4 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.5 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Mutual.

- 1.6 Bylaws. "Bylaws" shall mean the Amended Bylaws of the Mutual as they shall be duly adopted by the Board of Directors and the Members and any duly-adopted amendments thereof.
- 1.7 City. "City" shall mean the City of Walnut Creek.
- 1.8 Civil Code. "*Civil Code*" shall mean the California *Civil Code* as amended from time to time.
- 1.9 Common Area. "Common Area" shall mean all of the property comprising the Project that is owned by all of the Owners in common but excluding the Units.
- 1.10 Condominium. "Condominium" shall mean an estate in real property as defined in California *Civil Code* sections 783 and 1351(f), consisting of an undivided interest in common in the Common Area together with a separate fee interest in a Unit and any easements or other interests in the Project or any portion thereof appurtenant thereto, as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.
- 1.11 Condominium Plan. "Condominium Plan" or "Plan" shall mean any of the Plans listed in Exhibit B.
- 1.12 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.13 Corporations Code. "*Corporations Code*" shall mean the California Corporations Code as amended from time to time.
- 1.14 County. "County" shall mean the County of Contra Costa.
- 1.15 Declaration. "Declaration" shall mean this Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 59, recorded in the Office of the County Recorder of Contra Costa County, California, and any duly recorded amendments thereof.
- 1.16 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 8.11.
- 1.17 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of

the Owners and Residents of a one or more but less than all of the Units. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Unit; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement granted in this Declaration.

The Exclusive Use Common Area appurtenant to each Unit includes (i) any balcony, deck, porch, automobile parking space, patio, and/or storage space assigned to a Unit as shown on the Condominium Plans; and (ii) internal and external telephone wiring designed to serve the Unit.

In addition to the appurtenant Exclusive Use Common Area, exclusive easements for supplemental parking spaces and golf cart parking spaces have been or may be separately conveyed to the Owners of certain Units, as described in Section 3.3 ("Ownership of Condominium"). These spaces constitute Exclusive Use Common Area, but they are not appurtenant to the Unit. Schematic drawings of the parking spaces and golf cart parking spaces, indicating both appurtenant spaces and non-appurtenant spaces for each building in the Project, are attached as Exhibit C.

- 1.18 First Mortgage/First Mortgagee. "First Mortgage" shall mean a Mortgage that has first priority over any other Mortgage. "First Mortgagee" shall mean the beneficiary under a First Mortgage.
- 1.19 Foundation. "Foundation" shall mean the Golden Rain Foundation of Walnut Creek, a California nonprofit mutual benefit corporation.
- 1.20 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules.
- 1.21 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.
- 1.22 Maintenance Policies. "Maintenance Policies" shall mean the policies adopted by the Board from time to time concerning and governing the respective responsibilities of the Mutual and the Owner as to maintenance, repair, and replacement of Common Area, Exclusive Use Common Area, and the Units. In the case of any conflict between any provision of the Declaration and the provisions of the Maintenance Policies, the provisions of the Maintenance Policies shall control.
- 1.23 Manor. See definition of "Unit."

- 1.24 Member. "Member" shall mean an Owner.
- 1.25 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Mutual who is current in the payment of all Assessments and Additional Charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents.
- 1.26 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.
- 1.27 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as under a Mortgage.
- 1.28 Mutual. "Mutual" shall mean Walnut Creek Mutual No. 59, a California nonprofit mutual benefit corporation, its successors and assigns. The Mutual is an "association" as defined in *Civil Code* section 1351(a).
- 1.29 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Condominium, including Contract Sellers but excluding Contract Purchasers, and excluding those persons having such interest merely as security for the performance of an obligation.
- 1.30 Original Declaration. "Original Declaration" shall mean collectively the recorded documents listed in Exhibit A.
- 1.31 Project. "Project" shall mean all of the real property described in this Declaration comprising the Walnut Creek Mutual No. 59 condominium project, including all structures and other improvements located at any time upon said real property.
- 1.32 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.10.
- 1.33 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.34 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.

- 1.35 Resident. "Resident" shall mean any person who resides in a Unit within the Project whether or not such person is an Owner.
- 1.36 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, operation, use, and occupancy of the Project, including the use of the Common Area and facilities, the personal conduct of Owners and Residents, members of their household, pets, tenants, invitees, and guests within the Project, enforcement of the Governing Documents, and any other matter which is within the jurisdiction of the Mutual, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 1357.100 *et seq.* The Rules shall include but are not limited to the Senior Housing Residency Restrictions and the Maintenance Policies.
- 1.37 Senior Housing Residency Restrictions. "Senior Housing Residency Restrictions" shall mean the residency policy described in Section 5.1.
- 1.38 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.9.
- 1.39 Subdivision Map. "Subdivision Map" shall mean that certain Map of Subdivision 7169, Mutual 59, filed on July 29, 1992 in Book 362 of Maps at Pages 24 through 27, in the Official Records of Contra Costa County.
- 1.40 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Unit, excluding any Units as to which an Owner is not then a Member in Good Standing.
- 1.41 Unit. "Unit" shall mean the elements of a Condominium that are not owned in common with the Owners of other Condominiums within the Project, which Units are shown as separately designated and numbered areas on the Condominium Plan. The Units may sometimes be referred to as "Manors" in Mutual or Foundation documents. There are 108 Units in the Project.

Each Unit consists of the interior space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and window frames, doors, door frames and trim, of each of such interior spaces.

Each Unit includes (i) the utility installations, fixtures, and appliances located within its boundaries and/or which exclusively serve the Unit, even though located partly or entirely outside the Unit, including, without limitation: all doors, door frames, and hardware incident thereto, and all screens and windows; oven, range and fans; garbage disposal unit;

dishwasher unit; lighting fixtures; heating conduits; any heating and air conditioning units, condensers, and equipment serving such Unit; bathtubs, sinks and wash basins, shower stalls, toilets, and other plumbing fixtures; and (ii) interior partitions other than bearing walls that are located entirely within the boundaries of the Unit they serve. Bearing walls, soffits, and furred down ceilings (except for the finished surfaces thereof) are not part of the Unit.

Each Unit includes both the portions of the building so described and the air space so encompassed.

In interpreting deeds, the Declaration, and the Condominium Plan, it shall be conclusively presumed that the then existing physical boundaries of a Unit are its boundaries, rather than the metes and bounds or other description expressed in the deed, the Declaration, or the Condominium Plan, regardless of any settling or lateral movement of buildings and regardless of minor variance between the boundaries shown on the deed, in the Declaration, or in the Condominium Plan and the actual existing physical boundaries.

ARTICLE 2 MUTUAL; FOUNDATION

- 2.1 Management and Operation; Bylaws. The Mutual is an "association" as defined in *Civil Code* section 1351(a) and, as such, shall have the power and the authority to manage and operate the Project in accordance with the Governing Documents and the provisions of applicable law. The Mutual shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. Provisions concerning the operation of the Mutual as a nonprofit mutual benefit corporation are set forth in the Bylaws.
- 2.2 Membership. Every Owner of a Condominium shall be a Member of the Mutual and shall remain a Member thereof until such time as his or her Condominium ownership ceases for any reason. Membership in the Mutual shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.

- 2.3 Voting. Only Members in Good Standing shall be entitled to vote and, only one vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.
- 2.4 Mutual Rules. Subject to applicable law including *Civil Code* section 1357.100 *et seq.* regarding notice and procedures, the Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce Rules.
- 2.5 Relationship to Foundation. The Project is one of several common interest developments ("the Rossmoor developments") located within a senior housing community known as Rossmoor. The Rossmoor developments are managed and operated by various associations known within Rossmoor as "mutuals." The mutuals (including the Mutual) are the beneficiaries under a certain trust agreement. The Foundation is the trustee under the trust agreement. By the terms of the Foundation's articles of incorporation and the trust agreement, the primary purpose of the Foundation is to act as trustee with respect to all land and 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 beneficiaries under the trust based on the number of the members of the respective mutuals. 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 Section 8.7.1 ("Calculation of Estimated Requirement").
- 2.6 Membership in the Foundation. Membership in the Foundation is distinct from membership in the Mutual and shall be as determined by the Foundation pursuant to its duly adopted articles of incorporation, bylaws, and/or other applicable instruments

ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION

- 3.1 Legal Description. The property subject to this Declaration and to the jurisdiction of the Mutual is described in Recital Paragraph B.
- 3.2 Classification of Property. The property subject to this Declaration is a condominium project. All of the property subject to the Declaration is divided into the following categories:
- (a) Common Area,

- (b) Exclusive Use Common Area, and
- (c) Units.

- 3.3 Ownership of Condominium. Ownership of each Condominium within the Project shall include: (i) a designated Unit, (ii) the respective undivided 1/54th interest as tenant in common in Common Area Lot 1 (for Units in Phase I) or 1/54 interest as tenant in Common Area Lot 2 (for Units in Phase II), (iii) a Membership in the Mutual, and (iv) any exclusive easements or easements appurtenant to such Unit upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan, but excluding any non-appurtenant easement for a parking space or golf cart parking space conveyed to an Owner separately and not as an appurtenance to the Unit. Conveyance of such non-appurtenant easements shall be subject to the provisions of Section 3.7.
- 3.4 Undivided Interests Cannot Be Changed. The undivided interests in the Common Area established in this Declaration cannot be changed.
- 3.5 No Separate Conveyance of Undivided Interests. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.
- 3.6 Limitation on Partition. Except as provided in *Civil Code* section 1359 (in the case of substantial damage to or destruction or obsolescence of the Project), there shall be no judicial partition of the Project or any part thereof, nor shall any Owner or any person acquiring any interest in the Project or any part of the Project seek any judicial partition thereof; provided, however, that if any Unit shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing contained in this Declaration shall be deemed to prevent a judicial partition by sale as between such co-tenants.
- 3.7 Conveyance of Non-Appurtenant Parking and Golf Carts Spaces. Conveyance of non-appurtenant Exclusive Use Common Area in the Project shall be subject to the provisions of this Section 3.7. Parking spaces and golf cart parking spaces that constitute non-appurtenant Exclusive Use Common Area are listed in Exhibit C. Non-appurtenant Exclusive Use Common Area in the Project may be conveyed separately

from a Unit but shall not be sold, transferred, or conveyed to any person who is not the Owner or purchaser of a Unit in the building in which such non-appurtenant Exclusive Use Common Area is located or to the Mutual. The foregoing shall not be construed to impose any obligation on the Mutual to purchase any such non-appurtenant Exclusive Use Common Area.

- 3.8 New Capital Improvements. The Board shall have the power and authority to provide for the construction, installation, or acquisition of new capital improvements upon the Common Area (as distinguished from the reconstruction or replacement of an existing capital improvement).
- 3.9 Sale or Mortgage of Mutual Real Property. The Board acting on behalf of the Mutual shall have the power and authority to sell, transfer, mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Mutual.
- 3.10 Sale or Transfer of Mutual Personal Property. The Board shall have the power to sell or transfer property owned by the Mutual.

ARTICLE 4 COMMON AREA AND EASEMENTS

- 4.1 Use of Common Area Generally. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Owners and the Residents, members of their household, tenants, and guests as provided in the Governing Documents.
- 4.2 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Project to the members of his or her household, tenants, Contract Purchasers, and guests, subject to the terms of the Governing Documents. It is the express purpose and intent of this Section 4.2 to limit the right of use and enjoyment of the Common Area (including Exclusive Use Common Area) to Residents of the Project and their accompanied guests. Upon the leasing or renting of a Unit, or upon occupancy of a Unit by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Unit. Any rights of enjoyment that have been delegated by an Owner are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.
- 4.3 Notice Regarding Household Members, Tenants, or Contract Purchasers. Each Owner shall notify the Secretary of the Mutual of the names of any tenants or any Contract Purchasers occupying such Owner's Unit. Each

Owner, tenant, or Contract Purchaser shall also notify the Board of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Project as provided herein and the relationship each such person bears to such Owner, tenant, or Contract Purchaser.

- 4.4 Common Area Construction. Except as may be authorized by the Board, no person or entity other than the Mutual or its duly-authorized agents shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.
- 4.5 Mechanic's Lien against Common Area. In the event there shall be filed against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Project or his or her Unit, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, and notwithstanding any other provisions of the Governing Documents concerning notice or hearing, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Mutual or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Mutual together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.
- 4.6 Easements in General. In addition to all easements reserved and granted on the Subdivision Map or the Condominium Plans, there are hereby specifically reserved and granted for the benefit of the Units and Unit Owners in common and for each Unit and Unit Owner severally, and for the Mutual, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights of way as particularly identified in this Article 4.

- 4.7 Exclusive Use Common Area. "Exclusive Use Common Areas" are subject, as the servient tenements, to exclusive easements in favor of the Units to which they are attached or assigned, as the dominant tenements, and such exclusive easements shall be appurtenant to those designated Units, except for non-appurtenant easements as described in Section 3.3 ("Ownership of Condominium").
- 4.8 Owners Non-Exclusive Easements of Enjoyment. Every Owner of a Condominium shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Project; provided, however, such non-exclusive easements shall be subordinate to, and shall not interfere in any way with, the exclusive easements, if any, appurtenant to Units over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Unit, subject to the following rights and restrictions:
- (a) The right of the Board to establish and enforce Rules governing the use of the Common Area and facilities thereon;
 - (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
 - (c) The right of the Board to suspend an Owner's right to use the recreational facilities as provided in Section 11.8 ("Imposing Sanctions");
 - (d) The right of the Board, as set forth in Section 3.9 ("Sale or Mortgage of Mutual Real Property"), to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Mutual;
 - (e) The right of the Board, as set forth in Section 3.10 ("Sale or Transfer of Mutual Personal Property"), to sell or transfer personal property owned by the Mutual;
 - (f) The right of the Board, as set forth in Section 4.10 ("Utility Easements"), to grant and transfer utility easements and rights of way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;
 - (g) The right of the Board, as set forth in Section 4.11 ("Board Power to Grant Easements and Licenses"), to grant easements, licenses, and rights of way upon the Common Area; and

- (h) The right of the Mutual or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

4.9 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Units due to the settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist in favor of an Owner, a Resident, or the Mutual if such encroachment occurred due to willful unauthorized conduct on the part of such person. In the event that any Unit is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Unit agree that minor encroachments over adjoining Units and/or Common Area shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist.

4.10 Utility Easements. There are reserved and there shall exist easements over and under the Project or any portion thereof for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, chutes, ducts or other devices for electricity, heating, air conditioning, cable television, power, telephone and other purposes, garbage chutes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Mutual, together with the right to grant and transfer the same and each purchaser, in accepting a deed to a Unit, expressly consents thereto; provided, however, that no such easement or right of way may be granted or transferred if it would unreasonably interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Unit and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

4.11 Board Power to Grant Easements and Licenses. The Board shall have the power, without additional vote of the membership, to grant and convey easements, licenses for use, and rights of way in, over, or under the Common Area or any portion thereof to Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Mutual, including but not limited to the right, on behalf of the Mutual as successor in interest to the Declarants named in

Paragraph A of the Recitals of this Declaration, to sell or grant the exclusive use of parking spaces and golf cart parking spaces which were not sold or granted by any of the Declarants (which spaces are indicated on Exhibit C) and any non-appurtenant parking space or golf cart parking space the Mutual may acquire pursuant to Section 3.7 ("Conveyance of Non-Appurtenant Parking and Golf Cart Spaces") on such terms and conditions as the Board may determine.

ARTICLE 5 USE RESTRICTIONS

- 5.1 Senior Citizen Residential Use. Except to the extent permitted in Section 5.4 ("Restriction on Businesses"), all Units shall be occupied and used for senior citizen residential purposes only. Residents, other occupants, and guests shall be subject to this Section 5.1 and the age and other restrictions set forth in the Senior Housing Residency Restrictions adopted by the Board in compliance with applicable federal and California law, as those laws may be amended from time to time, and all such persons shall cooperate with the Board as required to verify the Mutual's compliance with such laws. Notwithstanding any contrary provision in the Senior Housing Residency Restrictions, this Section 5.1 shall at all times be deemed to restrict residency and occupancy to older persons or senior citizens to the fullest extent permitted by applicable law.
- 5.2 Number of Occupants; Guests. In no event shall any Unit be occupied by more individuals (including guests) than permitted by applicable zoning laws or other governmental regulations. The number and qualification of guests shall be governed by the Rules, including the Senior Housing Residency Restrictions.
- 5.3 Rental of Condominiums. Renting or leasing of any Condominium shall be subject to the provisions of Article 6 ("Renting or Leasing").
- 5.4 Restriction on Businesses.
- 5.4.1 Types of Businesses Allowed. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Project except: (i) such professional and administrative occupations as may be permitted by applicable governmental ordinances and that have no external evidence of such activity, cause no significant increase in traffic within the Project, comply with all applicable governmental ordinances, and are merely incidental to the use of the Unit for residential purposes and (ii) certain facilities to the extent specifically authorized by law.

- 5.4.2 External Evidence. For purposes of this Section 5.4, external evidence may include, but is not limited to, signs, the presence of employees, or business traffic including clients, vendors, or delivery services.
- 5.4.3 Indemnification Regarding Business Activity. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within the Project, or whose tenant does so, agrees to and shall indemnify and defend the Mutual, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Mutual of the Governing Documents, including but not limited to the restriction on business contained in this Section 5.4. Any amounts owed pursuant to this Section 5.4.3 may be assessed as a Reimbursement Assessment.
- 5.5 Offensive Conduct, Nuisances, Noise. No noxious, harmful, or offensive activities shall be conducted upon or within any part of the Project, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Project, or which shall in any way interfere with Residents' use of the Common Area and facilities thereon or the use and enjoyment of their Units. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Unit, which would unreasonably disturb another Resident's enjoyment of his or her Unit or of the Common Area. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations (including Rules of the Mutual) applicable to his or her Unit and the Common Area.
- 5.6 Use of Common Area. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed, placed, kept, stored, parked, planted on, or removed from the Common Area without the prior written consent of the Board; and the Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. There shall be no obstruction of any part of the Common Area. Each Owner shall avoid causing any damage to the Common Area.

- 5.7 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the Project that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Mutual, or which will be in violation of any governmental statute, ordinance, rule, or regulation.
- 5.8 Requirement of Architectural Approval. As addressed in Article 7 ("Architectural Approval"), construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to prior approval of the Board.
- 5.9 Sports Apparatus. No basketball standards (including so-called portable basketball standards) or other portable or fixed sports apparatus shall be placed upon or attached to any portion of the Project without prior written approval of the Board.
- 5.10 Mailboxes and Exterior Newspaper Tubes. Mailboxes shall comply with all applicable postal regulations and Architectural Rules, if any.
- 5.11 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained in the Project.
- 5.12 Satellite Dishes and Antennas. To the fullest extent permitted by law, the Board may adopt and enforce Rules regarding the installation and maintenance of outside masts, towers, poles, antennas, and satellite receivers or transmitters and other radio and telecommunications facilities in the Project.
- 5.13 Animals.
- 5.13.1 Limitation on Pets. No animals shall be kept, bred, or maintained within the Project for commercial purposes. The number of domestic dogs, cats, birds, fish and other common domestic household pets may be kept in each Unit shall be established by the Rules, but in no event shall such numbers exceed those permitted by local ordinance. Unless otherwise provided in the Rules, a "reasonable number" shall be deemed to limit the total number of all dogs, cats, and birds kept in a Unit to two (2). While in Common Areas each dog must be restrained on a leash held by a responsible person capable of controlling it.
- 5.13.2 Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Project by such pet.

5.13.3 Indemnification Regarding Pets. Each Owner, Resident, and any person bringing or keeping an animal within the Project shall be absolutely liable to the Mutual and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Project by such person or by members of his or her household, tenants, invitees, or guests. To the fullest extent permitted by law, each Owner agrees to and shall indemnify and defend the Mutual, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Project by the Owner, members of his or her household, tenants, invitees, or guests including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Mutual of the Governing Documents, including but not limited to the restrictions on animals contained in this Section 5.13. Any amounts owed pursuant to this Section 5.13.3 may be assessed as a Reimbursement Assessment.

5.13.4 Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section 5.13. The Mutual shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance.

5.14 Trash Disposal. Trash, garbage, accumulated waste plant material, other waste and refuse, and recyclable waste shall be deposited only in containers provided for that purpose by the garbage collection service. Such containers shall be located in an appropriate area near each Unit and concealed from view. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of any Unit or elsewhere in the Project, except in such containers.

5.15 Signs, Banners, Flags. No sign, poster, banner, or flag of any kind shall be displayed to the public view from any portion of the Project except that this limitation shall not apply to:

- (a) Signs required by legal proceedings;
- (b) Other signs which by law cannot be prohibited;
- (c) A flag of the United States, subject to any city or county restrictions as to size and as to time, place, and manner of display;

- (d) A single identification sign which has been approved by the Board located on a Unit identifying the number or address of the Unit and/or the names of the occupants;
- (e) Signs required for traffic control and regulation of streets or open areas within the Project; and
- (f) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Mutual, including signs located at or near any entrance to the Project identifying the Project.

5.16 Vehicles and Parking. The parking, storage, and use of vehicles (including golf carts) within the Project shall be governed by and shall be subject to Rules adopted by the Board.

5.17 Garages/ Parking Spaces. Each Owner and Resident shall keep his or her garage/parking area in a neat, orderly, sanitary, and safe condition.

ARTICLE 6 RENTING OR LEASING

6.1 Requirements for Renting As provided in Section 5.1 ("Senior Citizen Residential Use"), all Residents, other occupants, and guests shall be subject to Section 5.1 and the age and other restrictions set forth in the Senior Housing Residency Restrictions adopted by the Board in compliance with applicable federal and California law, as those laws may be amended from time to time. All such persons shall cooperate with the Board as required to verify the Mutual's compliance with such laws. An owner renting his or her Dwelling shall:

- (a) do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for a term not longer than twelve (12) months and shall expressly provide that: (i) its terms are subject to all of the provisions of the Governing Documents; (ii) the Development is a "senior citizen housing development" and all occupants, guests, and visitors shall comply with and satisfy the Senior Housing Residency Restrictions; (iii) that failure of the tenant, members of the tenant's household, invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a default under the terms of such lease or rental agreement; and (iv) in the event of any such default, the Mutual shall be entitled to maintain an eviction action against the tenant to the same extent as the Owner of the Unit, the Mutual being deemed to be a third party beneficiary under such lease or rental

agreement, as provided in Section 6.6 ("Mutual as Third Party Beneficiary").

- (b) file a copy of the signed lease or rental agreement with the Board. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy provided to the Board;
- (c) provide the tenant with a copy of the Governing Documents, specifically including the Senior Housing Residency Restrictions, and any subsequent changes thereto;
- (d) notify the Board of the name of each tenant and of the members of the tenant's household;
- (e) upon request of the Mutual, cause all tenants and occupants to execute and submit to the Mutual an affidavit or certificate in a form prescribed by the Mutual, which includes the following and such other matters as are reasonably required by the Mutual: that he/she/they understand (i) that the Development is a "senior citizen housing development" and that all occupants, guests, and visitors are restricted and must satisfy the Senior Housing Residency Restrictions, (ii) that he/she/they has/have received copies of the Governing Documents, specifically including the Senior Housing Residency Restrictions, (iii) that the lease is expressly subject to all the provisions of the Governing Documents, and (iv) that the breach of any provision of the Governing Documents shall constitute a default under the lease.

6.2 Rental of Parking Spaces and Golf Cart Parking Spaces. Parking spaces and golf cart parking spaces may be rented separately from the Unit but shall not be rented to any person who is not a Resident of Mutual 59.

6.3 Time-Share Arrangements; Private Exchanges.

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

whether monetary or like kind use privileges, according to a fixed or floating interval or period of time.

6.3.2 Private Exchanges. Section 6.3.1 shall not be deemed to prohibit an Owner from entering into a private exchange arrangement with another person whereby the Owner will occupy the dwelling of the other person to the exchange for a defined temporary period and that other person will occupy the Owner's Unit during the same period; provided that the exchange period shall not exceed ninety (90) consecutive days and only one such exchange shall be permitted in any calendar year. Each Owner who enters into a private exchange arrangement shall provide written notice to the Board in advance of arrival of the guest(s), which notice shall include the guest(s) name(s) and such other information as the Board shall require. A private exchange arrangement in compliance with this Section 6.3.2 shall not constitute a rental and shall not be subject to the numerical limitations set forth in Section 6.4 on the permitted number of rentals.

6.4 Limitation on Number of Permitted Rentals. Except as provided in this Section 6.4, not more than two Units in any building shall, at any particular time, be leased or rented or occupied by anyone other than an Owner together with members of his or her household or temporary guests, such that at least sixteen (16) Units in each building are Owner-occupied. For purposes of this Section 6.4, a Resident who is a beneficiary under a trust shall be deemed to be an Owner-occupant if legal title to the Unit is in the name of the trustee(s) of the trust.

6.4.1 Grandfathered Units. The limitation on the number of permitted rentals as set forth in this Section 6.4 shall not apply to any Unit which is being leased or rented on the date this Declaration is recorded, but shall apply to any such Unit if legal title to the Unit is transferred subsequent to the date this Declaration is recorded, such that if the number of Units being rented at the time of such sale is more than the number permitted pursuant to Section 6.4, the Unit shall be sold to an Owner-occupant and not for rental.

6.4.2 Hardship Waivers. The Board shall have the right but shall not be obligated to waive the limitation on the number of permitted rentals or the order of priority of requests to rent in cases of deserving and unusual hardship; provided (i) such waiver shall be for a limited term, not to exceed one (1) year, (ii) the Owner requesting the waiver shall deliver to the Board a signed statement representing that he or she will retake possession

and occupancy of the Unit as a Resident thereof upon the expiration of the specified limited term, and (iii) the waiver shall be subject to such other conditions as the Board may determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term.

- 6.4.3 Implementation. Upon request from the Board after this Declaration is recorded, each Owner then renting or leasing a Unit shall provide to the Board such information as the Board may reasonably require in order to implement the provisions of this Article 6, including but not limited to a copy of the signed lease. Any rental or leasing of a Unit commencing after this Declaration is recorded and the renewal of a tenancy in effect on the date this Declaration is recorded shall be pursuant to a written lease or rental agreement in accordance with Section 6.1. ("Requirements for Renting").
- 6.4.4 List of Rented Units. The Board shall establish and maintain for each building in the Project a list of all Owners currently leasing or renting a Unit. The list of rented Units shall include: (i) the Owner's name, (ii) the address of the rented Unit, (iii) the Owner's record date of ownership, and (iv) the term of the lease. The list of rented Units shall be made available to any Owner of a Unit in the building upon payment of a reasonable administrative charge to be set by the Board.
- 6.4.5 Written Request to Rent. Any Owner desiring to rent his or her Unit shall submit to the Board a written request to rent, which shall state: (i) the Owner's name and mailing address, (ii) the Unit address, (iii) the Owner's record date of ownership, (iv) the proposed lease term and the number of tenants; and (v) such other information as the Board may reasonably require from time to time. The Owner shall have the right, upon written request delivered to the Mutual, to appear in person before the Board to discuss the request to lease or rent his or her Unit.
- 6.4.6 Priority of Requests to Rent. The Board shall establish and maintain for each building in the Project a priority list of requests to rent, organized in the order of date received by the Board. The priority list shall include (i) the name of the requesting Owner, (ii) the address of the Unit in question, (iii) the Owner's record date of ownership, and (iv) the date the written request was received by the Board.
- 6.4.7 Review of Request to Rent. Within thirty (30) days after receipt, the Board shall review and shall approve or deny an Owner's

request to rent. Written notice of the Board's decision shall be transmitted to the requesting Owner and if the request is denied, the notice shall specify the reason(s) for denial. The Board shall approve the application unless doing so will increase the number of Units leased or rented within a particular building in the Project to more than the number permitted under Section 6.4, or will otherwise result in the violation of any provision of this Article 6. When the number of Units leased or rented in the Project is less than the number permitted under Section 6.4, the Board shall authorize the Owner who submitted the earliest received application to lease or rent his or her Unit. When the number of Units leased or rented in the Project equals or exceeds the number permitted under Section 6.4, Owner requests to rent shall be added to the priority list maintained pursuant to Section 6.4.6.

6.4.8 Reconsideration of Denied Request. If a request to rent is denied, the requesting Owner shall have a right, upon written request, to reconsideration by the Board in accordance with Section 11.13 ("Owner Request for Hearing"). Within fifteen (15) days after such reconsideration, the Board shall transmit its written determination to the requesting Owner.

6.4.9 Duration of Authorization to Rent, No Subletting. Subject to the provisions of Section 6.4.1 concerning grandfathered Owners/Units and, except in the case of a hardship waiver granted pursuant to Section 6.4.2, once an Owner obtains permission to lease or rent a Unit, that Owner shall have the right to continue renting that Unit to consecutive lessees or renters or for consecutive terms without having to submit or re-submit a request to rent; provided (i) the continuing lease or rental is otherwise in compliance with the provisions of this Article 6, (ii) the lease or rental is without interruption of more than thirty (30) days, and (iii) during any interruption in rental the Owner shall not reoccupy the Unit for a period exceeding thirty (30) days. No subletting shall be permitted.

6.5 Decision of Board Conclusive. The decision of the Board in approving or denying a request to rent shall be final and conclusive.

6.6 Mutual As Third Party Beneficiary. Notwithstanding the failure of an Owner to comply with the requirements of Section 6.1, and whether or not it is so stated in a written contract or other agreement between such Owner and such tenant, the Owner and the tenant of any Unit subject to this Declaration shall be conclusively deemed to have agreed that the Mutual is an intended third party beneficiary to the contract between the

Owner and the tenant; that failure of the tenant, members of the tenant's household, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant; and that the Mutual shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under this Declaration including but not limited to the rights granted pursuant to Section 8.18 ("Assignment of Rents as Security for Payment"), or under the law. This Section 6.6 shall apply to any tenancy commencing or extended or renewed after the date this Declaration is recorded.

- 6.7 Indemnification Regarding Tenant's Actions. Each Owner leasing or renting a Unit shall be strictly responsible and liable to the Mutual for the actions of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of the Governing Documents. To the fullest extent permitted by law, every Owner of a Unit that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Mutual, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of the occupants of the Unit upon the Project, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Mutual of the Governing Documents with respect to such occupants. Any amounts owed pursuant to this Section 6.7 may be assessed as a Reimbursement Assessment.

ARTICLE 7 ARCHITECTURAL APPROVAL

- 7.1 Architectural Approval Required. No building, fence, hedge or similar barrier, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind, no outdoor lighting, no mast, pole, tower, antenna, receiver, or transmitter to the extent restricted by Section 5.12, and no landscaping shall be commenced, erected, painted, or installed within the Project, nor shall any exterior addition or change or alteration be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Board. The foregoing shall not apply to improvements made or constructed by or on behalf of the Mutual.
- 7.2 Interior Decorations. Except as provided in this Section 7.2, the requirement of prior approval shall not apply to decorating or redecorating the interior of the Unit.

- 7.2.1 Interior Surfaces of Unit. Each Owner shall have complete discretion as to furniture, furnishings, and interior decorating of the interior of his or her Unit and shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors bounding his or her Unit, and to substitute new finished surfaces for the finished surfaces existing on said walls, ceilings, floors, and doors, including, without limiting the generality of the foregoing, substitution of paint for paper or paper for paint, substitution of any types of panel for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile, or substitution of wood for linoleum or tile or of linoleum or tile for wood; provided, however, that no hard surface floors shall be permitted in second- or third-floor living areas except for vinyl flooring in kitchen, bathroom, and laundry rooms, and windows shall not under any circumstances be painted or covered by foil, cardboard, or other similar materials.
- 7.2.2 Changes in Floors, Walls, or Utility Systems. Prior approval shall be required for (i) any change that may affect the structural integrity of the building in which the Unit is located including but not limited to removing, moving, changing, or creating any opening in a wall, floor, or ceiling or (ii) for any change in the plumbing, electrical wiring, heating and ventilating ducts, or any other system that is part of the Common Area.
- 7.3 Preliminary Consultation Prior to Submitting Application. Any Owner considering performing any work requiring the prior approval of the Board may apply to the Board for preliminary consultation by submitting preliminary plans or drawings of the contemplated work in accordance with the Architectural Rules. The purpose of the preliminary consultation procedure is to allow an Owner considering making substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for actual approval. Within forty-five (45) days after receiving a request for a preliminary consultation, the Board shall consider the preliminary information submitted and shall respond in writing to the Owner. The response shall give the requesting Owner such direction concerning the form and substance of an approval application for the contemplated work as the Board deems proper or desirable for the guidance of the Owner. The issuance of a preliminary consultation response by the Board shall not under any circumstances be deemed approval of any contemplated work; nor, once an Owner submits a request for approval, shall it preclude the Board requesting additional information about the proposed work based on the actual application.

- 7.4 Architectural Committee. The Board may appoint an Architectural Committee, at least one of whom shall be a Director. If an Architectural Committee is appointed, it shall review all requests for approval and requests for preliminary consultation submitted in accordance with this Article 7 and provide recommendations to the Board concerning the same. The Board has the authority to accept, modify, or reject the Committee's recommendations and shall make the final decision on all requests for approval. The Committee shall also have such other duties and responsibilities as may be assigned by the Board. In the absence of a duly-constituted Architectural Committee, the Board shall perform the functions of the Committee.
- 7.5 Architectural Rules. Subject to the requirements of *Civil Code* section 1357.100 *et seq.*, the Board may from time to time adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Architectural Rules shall set forth the standards for Board review and guidelines for architectural design, placement of buildings and other structures, outdoor lighting, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Project; provided, however, that Architectural Rules shall not be in derogation of any minimum standards required by this Declaration. Any Architectural Rules concerning the installation or repair of a roof shall comply with applicable law including *Civil Code* section 1353.7, if it applies.
- 7.6 Written Request for Board Approval. Any Owner proposing to perform any work that requires prior approval pursuant to this Article 7, shall submit to the Committee or Board a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Committee or Board may require.
- 7.7 Fees. The Board may charge a reasonable fee or fees for review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.
- 7.8 Decisions To Be Made in Good Faith. An Owner's request for approval shall be considered by the Board in an open Board meeting. The Owner and, in the Board's discretion, other interested persons, may present information relevant to the requested approval. The Board's decisions shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and intended that the Board will employ subjective criteria and judgments in its review of and determination concerning plans and proposals submitted to it. The Board shall make its

decisions from the perspective of the interest of the Project as a whole in the fostering of the coherence, value, attractiveness and aesthetic compatibility of all architectural designs and features in the Project, after consideration of such factors the Board reasonably determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal submitted to the Board. The Board shall grant the requested approval only if:

- (a) The Owner has submitted a complete application;
- (b) The Board finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Board; and
- (c) The Board finds that the proposed work will, if approved, be consistent and compatible with the architectural and aesthetic standards prevailing within the Project and will be in harmony with the external design and appearance of other existing structures and improvements within the Project, and as to location with respect to topography and finished grade elevations; and
- (d) The Board determines that the proposed work would be consistent with the standards of the Project and the purposes of this Declaration as to quality of workmanship and materials.

7.9 Decisions In Writing. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Board within forty-five (45) days from the date of submission of a complete application to the Board. If a request is rejected, the decision shall include an explanation of the Board's decision.

7.10 Appeal by Internal Dispute Resolution. If the Board shall fail to act on a request for approval within the time specified in Section 7.9, the Owner shall be entitled to invoke internal dispute resolution pursuant to *Civil Code* section 1363.840, discussed in Section 11.16.

7.11 Commencement of Approved Work. Upon receipt of written approval, the Owner shall, as soon as practicable, satisfy all conditions of the approval and diligently proceed with the commencement and completion of all approved work. Commencement of the approved work shall occur, in all cases, within ninety (90) days from the date of such approval. If the Owner fails to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. The Board shall not grant an extension of time for commencement of the work if the Board finds that

there has been a material change in the circumstances upon which the original approval was granted.

- 7.12 Completion. The Owner shall complete all approved work within one year after commencement thereof; except that in the case of original construction on a Unit or reconstruction after substantially total destruction of a Unit, the construction or reconstruction shall be completed within eighteen months after commencement thereof. The date for completion may be extended as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents, provided the Owner notifies the Board of such occurrence within a reasonable time after becoming aware of it. If an Owner fails to comply with this Section 7.12, the Board shall proceed in accordance with the provisions of Section 7.13, below, as though the failure to complete the improvements were a non-compliance with approved plans.
- 7.13 Inspection of Completed Work. Upon the completion of any work for which approval is required under this Article 7, the Owner shall give written notice thereof to the Board. Within sixty (60) days after receiving notice of completion from the Owner, the Board or its duly authorized representative may inspect such work to determine if it substantially complies with the granted approval. If the Board fails to notify the Owner of any non-conformity within such sixty (60) day period, the work shall be deemed to be in accordance with the granted approval.
- 7.14 Notice of Non-Conformity. If the Board finds that the work was not done in substantial conformity with the granted approval, it shall notify the Owner in writing before the end of such sixty (60) day period, specifying particulars of non-conformity and requiring the Owner to remedy the same within thirty (30) days from the date of the notice from the Board or such longer time as the Board may designate in the notice.
- 7.15 Failure to Remedy Non-Conformity. If the Owner fails to remedy such non-conformity within the time specified in the notice, the Board shall then, pursuant to the procedures set forth in Section 11.12 ("Hearings Called by the Board"), set a date on which a hearing before the Board shall be held regarding the alleged non-conformity. If the Board finds at such hearing that a substantial non-conformity exists, the Board may order the Owner to remedy or remove such non-conformity. If the Owner thereafter fails to do so within the time specified by the Board, the Board may, in addition to any other remedy, remove or remedy the non-conformity and all expenses incurred by the Mutual in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

- 7.16 Non-Waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring approval under this Article 7, shall not be deemed to constitute a waiver of the right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.
- 7.17 Disclaimer of Liability. Neither the Board nor any Committee nor any member thereof shall be liable to the Mutual, to any Owner, or to any person deriving an interest through an Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development of any property within the Project; provided that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or him or her. Without limiting the generality of the foregoing, the Board may, but is not required to, consult with or hear the views of the Mutual or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted for approval pursuant to this Article 7. Every purchaser, by acquiring title to a Unit or portion thereof agrees not to bring any action or suit against the Board or its members seeking to recover any such damages.
- 7.18 Compliance With Governmental Requirements. The Owner of each Unit is solely responsible for complying with any applicable building permit process or other governmental requirements with respect to any work done upon the Owner's Unit. The submission of a request for approval to the Committee or the Board and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, nor shall it constitute the assumption of any responsibility by or impose any liability on the Board or the Committee or its or their members as to the accuracy, efficacy, or sufficiency thereof. When Architectural approval standards of the Mutual are more stringent than applicable governmental standards, the more stringent standards shall apply, notwithstanding governmental approval based on less stringent standards.

ARTICLE 8 ASSESSMENTS AND LIENS

- 8.1 Covenant of Owner. Each Owner of a Unit within the Project, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Mutual all: (i) Annual Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv)

Enforcement Assessments levied by the Mutual as hereinafter provided, together with all Additional Charges.

- 8.1.1 Mutual's Power to Collect. Such deed or conveyance shall be deemed to vest in the Mutual the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.
- 8.1.2 Assessments Are a Personal Obligation. Assessments levied by the Mutual pursuant to this Declaration, together with all Additional Charges, shall be a personal debt and obligation of the Owner against whom they are assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.
- 8.1.3 Obligation Runs with the Land. The obligation to pay Assessments and Additional Charges and the right and power of the Mutual to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of any Unit shall, in turn, become liable to pay all such Assessments and Additional Charges assessed that become due and payable during the time he or she is Owner of such Unit.
- 8.1.4 Owner's Liability After Transfer. After an Owner transfers of record his or her interest in any Unit, he or she shall not be liable for any Assessments levied thereafter with respect to such Unit. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Unit shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Unit is recorded in the Office of the County Recorder.
- 8.2 Creation of Lien. Each Assessment levied by the Mutual pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Mutual shall have a separate lien and a separate lien is hereby created upon each Unit to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

- 8.2.1 Lien is Continuing. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Unit notwithstanding the transfer of record title to such Unit, and any such transfer shall be subject to the Mutual's lien, provided that, prior to such transfer, a notice of delinquent assessment has been recorded as provided in the Declaration and by law.
- 8.2.2 Priority of Liens. The priority of all such liens on each Unit shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Unit, any sale of such Unit pursuant to foreclosure of the lien will be made subject to all liens securing Assessments and Additional Charges on such Unit that become due and payable subsequent to the lien being foreclosed upon.
- 8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Project, of conducting the business and affairs of the Mutual, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Project, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Units situated within the Project or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Project or of the affairs of the Mutual, or the benefit of the Unit Owners, or for the enforcement of the Governing Documents.
- 8.4 Funds to Be Held in Mutual's Name. Unless otherwise determined by the Board, the Mutual shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated WALNUT CREEK MUTUAL NO. 59 OPERATING ACCOUNT and WALNUT CREEK MUTUAL NO. 59 RESERVE ACCOUNT. The Assessments and other sums collected by the Mutual shall be properly deposited into such accounts or paid over to the Foundation, as the case may be. Withdrawal of funds from Mutual accounts shall be subject to the requirements of Section 11.4 of the Bylaws, ("Checks, Drafts, and Evidences of Indebtedness").
- 8.5 Funds Held in Trust for Owners. The Assessments collected by and for the Mutual shall be held in trust by the Mutual for and on behalf of each Owner. Upon sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held in trust by the Mutual shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

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

8.7 Annual Assessment.

8.7.1 Calculation of Estimated Requirement. Prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Mutual for such fiscal year to manage, administer, operate, and maintain the Project; to conduct the affairs of the Mutual; and to perform all of the Mutual's duties in accordance with the Governing Documents, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Mutual is responsible and which must be repaired or replaced on a periodic basis and including the portion of the costs of the Foundation allocable to the Mutual as provided in Section 2.5. The amount of estimated required funds shall constitute the Annual Assessment.

8.7.2 Allocation of Annual Assessment. The Board shall allocate and assess the Annual Assessment equally among the Condominiums by dividing the amount by the number of Condominiums within the Project. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

8.7.3 Notice of Annual Assessment. Not less than thirty (30) days and not more than ninety (90) days prior to the beginning of each fiscal year, the Board shall send to each Owner a notice of the amount of the Annual Assessment allocated to his or her Condominium, except that if there is an increase in the Annual Assessment over the previous year, in compliance with *Civil Code* section 1355(d) the notice shall be mailed by first class mail to the Owner not less than thirty (30) days and not more than sixty (60) days before the due date of the increased Annual Assessment.

8.7.4 Application of Surplus Funds. If, as of the end of any fiscal year, there is an excess of membership income over membership expenses as defined in Internal Revenue Code section 277 for the year ended, such excess shall automatically be applied against the subsequent tax year's Member

Assessments as provided in Internal Revenue Service Revenue Ruling 70-604, unless some other lawful disposition of such excess income is determined by the vote of the Members.

- 8.8 Permitted Increases in Annual Assessment. Pursuant to *Civil Code* section 1366(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Mutual, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

8.9 Special Assessments.

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

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

- 8.9.3 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Condominiums in the same manner as Annual Assessments.

8.9.4 Notice of Special Assessment. Upon the imposition of a Special Assessment or an increase in a Special Assessment, in compliance with *Civil Code* section 1366(d) notice shall be sent by first class mail to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Special Assessment.

8.10 Reimbursement Assessments. The Board may levy a Reimbursement Assessment against an Owner and his or her Condominium:

- (a) to reimburse the Mutual for costs incurred to maintain, repair, or replace property (including property within a Unit) when such damage is due to the act or neglect of such Owner, his or her Resident Purchaser, or member of his or her household, pet, tenant, invitee, or guest, or as otherwise provided in the Governing Documents;
- (b) if the failure of such Owner, his or her Resident Purchaser, or member of his or her household, pet, tenant, invitee, or guest to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Mutual to deal with such lack of compliance or to bring such person or the Condominium into compliance;
- (c) to reimburse the Mutual for any costs of collecting from an Owner any amount the Owner is obligated to pay the Mutual.

Without limiting the generality of the foregoing, and to the fullest extent permitted by law, all costs including attorneys' fees, incurred by the Mutual to enforce Section 5.4 ("Restriction on Businesses"), Section 5.13 ("Animals"), Section 6.6 ("Mutual As Third Party Beneficiary"), Section 6.7 ("Indemnification Regarding Tenant's Actions"), Section 8.18 ("Assignment of Rents as Security for Payment"), and Section 11.6 ("Injunctions"), or to defend any claim arising or alleged to arise from any of the foregoing sections, shall be reimbursed to the Mutual as a Reimbursement Assessment. Any Reimbursement Assessment shall be due and payable to the Mutual when levied.

8.11 Enforcement Assessments. Subject to the requirements set forth in Section 11.8, the Board may levy an Enforcement Assessment (and any fine or monetary penalty imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Mutual when levied.

- 8.12 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.
- 8.13 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Mutual has failed to properly exercise its duties of maintenance or enforcement.
- 8.14 Delinquent Assessments. Any installment or other portion of an Assessment not received within fifteen (15) days after its due date shall be delinquent and, to the fullest extent permitted by law including *Civil Code* section 1366(e), shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges.
- 8.15 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the Mutual, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Condominium by judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the extent prohibited by *Civil Code* section 1367.1(e), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure.
- 8.15.1 Pre-Lien Notice. At least thirty (30) days prior to recording a Notice of Delinquent Assessment against a Condominium to collect a debt that is past due, the Mutual shall provide written notice to the Owner(s) of the Condominium, as required by *Civil Code* section 1367.1(a) ("Pre-Lien Notice").
- 8.15.2 Prior to Recording a Lien. Prior to recording a Notice of Delinquent Assessment, the Mutual shall comply with all applicable requirements imposed by law, including offering to participate in internal dispute resolution (Section 11.16 of this Declaration) or Alternative Dispute Resolution (Section 11.17 of this Declaration) to the extent required pursuant to *Civil Code* section 1367.1(c)(1) and making the decision to record a lien for

delinquent Assessments at an open meeting of the Board, to the extent required pursuant to *Civil Code* section 1367.1(c)(2).

- 8.15.3 Owner's Right To Discuss Payment Plan. To the extent provided in *Civil Code* section 1367.1(c)(3), an Owner may submit to the Board a written request to discuss a payment plan for a debt noticed in a Pre-Lien Notice. If the Owner's written request is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on the Pre-Lien Notice, the Board shall meet with the Owner within forty-five (45) days of the postmark date of the Owner's written request, unless there is not a regularly scheduled Board meeting within the period, in which case the Board, in its discretion, may hold a special meeting in executive session to meet with the Owner or may designate a committee of one or more Board members to meet with the Owner.
- 8.15.4 Notice of Delinquent Assessment. The amount of the past due debt noticed in the Pre-Lien Notice shall be a lien from and after the recording of a Notice of Delinquent Assessment. No later than ten (10) days after recordation, a copy of the Notice of Delinquent Assessment shall be mailed by certified mail in compliance with *Civil Code* section 1367.1(d) to every person whose name is shown as an Owner of the Condominium in the Mutual records or in such manner and to such persons as may be required by applicable law.
- 8.15.5 Delinquent Assessments of Less than \$1,800. To the extent provided in *Civil Code* section 1367.4, delinquent Assessments totaling less than One Thousand Eight Hundred Dollars (\$1,800) that are less than twelve (12) month delinquent may not be collected by judicial or non-judicial foreclosure, but may be collected in any other manner provided by law including a civil action in small claims court to the extent provided in *Civil Code* section 1367.4(b)(1) or recording a lien as provided in *Civil Code* section 1367.4(b)(2). Prior to recording such a lien the Mutual shall offer to participate in internal dispute resolution (Section 13.16 of this Declaration) to the extent required by *Civil Code* section 1367.4(b)(2).
- 8.15.6 Initiating Foreclosure. As provided in *Civil Code* section 1367.1(g), no procedures shall be initiated to foreclose the lien securing any noticed past due debt under this Article 8 until after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment. To the extent required pursuant to *Civil Code* section 1367.4(e), the Mutual shall offer

to participate in internal dispute resolution (Section 11.16 of this Declaration) or Alternative Dispute Resolution (Section 11.17 of this Declaration). To the extent required by *Civil Code* section 1367.4(c)(2), a decision to initiate foreclosure shall be made only by the Board in an executive session meeting.

8.15.7 Amount Due and Payable. Except with respect to the amount of any Enforcement Assessment, upon the recording of the Notice of Delinquent Assessment referred to above, the Mutual may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.

8.15.8 Notice of Initiating Foreclosure. To the extent required pursuant to *Civil Code* section 1367.4(c)(3), the Mutual shall provide written notice of initiating foreclosure to the record Owner of the Condominium, including notice by personal service to any Resident Owner.

8.16 Power of Sale. Each Owner does hereby appoint the Mutual as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, (section 2920 *et seq.*) of the *Civil Code* of the State of California, and does further grant to the Board of Directors, on behalf of the Mutual, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Mutual, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale.

8.17 Right of Redemption. To the extent provided pursuant to *Civil Code* section 1367.4(c)(4), a non-judicial foreclosure to collect delinquent Assessments shall be subject to a right of redemption.

8.18 Assignment of Rents as Security for Payment. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Mutual the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Condominium, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Mutual or in performance of any agreement under the Governing Documents including but not limited to those set forth in Article

6 ("Renting or Leasing"), to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Mutual may at any time, upon ten days written notice to such Owner, then (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) enter upon and take possession of such Owner's Condominium or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Mutual may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this Section 8.18 shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first mortgage on any Condominium, or any part thereof, to do the same or similar acts.

- 8.19 Remedies Are Cumulative. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Mutual may use one or more or all of the available remedies to collect delinquent Assessments.
- 8.20 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 8.21 Subordination to Lien of First Mortgage. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Declaration shall have priority as of the date of recording of the original Declaration applicable to the Project over all other liens and encumbrances applicable to the Condominiums; provided, however, that such Assessment lien shall be subordinate to the lien of any First Mortgage recorded against the Condominium; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional

Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

- 8.22 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Declaration.
- 8.23 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:
- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use;
 - (b) Any Condominium which is owned by the Mutual as a result of the Mutual having acquired such Condominium through foreclosure; provided, however, that such exemption shall apply only during the period in which the Mutual is record owner of such Condominium; and
 - (c) All Common Area.

ARTICLE 9 MAINTENANCE OF PROPERTY

- 9.1 Mutual Responsibility for Common Area Maintenance Generally. The Mutual shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon, including private driveways, walks, and all other real and/or personal property that may be acquired by the Mutual, keeping such property in good condition and repair as the Board in its discretion determines to be necessary; *provided, however*, that the Mutual shall not be responsible for maintenance, repair, or replacement of Exclusive Use Common Area except to the extent expressly provided in this Article 9 or in the Maintenance Policies. Without limiting the generality of the foregoing:
- 9.1.1 Landscaping, Janitorial; Painting. The Mutual shall specifically be responsible for providing lighting, landscaping, gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants upon the Common Area), and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in

good condition and repair, including painting of the exterior surfaces of the building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary.

- 9.1.2 Common Area Utilities and Services. The Mutual shall obtain for the benefit of the Owners and Residents, such utilities and services for the Common Area as the Board shall determine beneficial. The Mutual shall maintain all utility installations located in the Common Area, except for those installations facilities that are maintained by public or private utility companies or agencies. The Mutual shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.
- 9.2 Mutual Responsibility for Exclusive Use Common Area and Units. The Mutual shall provide maintenance, repair, and replacement of Exclusive Use Common Area and the Units as set forth in the Maintenance Policies as adopted and amended by the Board from time to time.
- 9.3 Concealed Damage. If, in the course of performing maintenance, repairs, or replacement that is the Mutual's responsibility, the Mutual or its agents discover damage that is the Owner's responsibility, the responsible Owner shall be promptly notified of the situation and of the time in which required repairs or replacement must be performed in order for the Mutual to proceed with or complete the work for which the Mutual is responsible. If, for any reason, the responsible Owner does not perform or arrange for timely performance of the required repairs or replacement, and the Board in its reasonable judgment determines that a delay in the performance of such work by the Owner would unreasonably delay or increase the cost of the work for which the Mutual is responsible, then the Mutual shall have the right to arrange for the performance of such repairs or replacement and charge the cost thereof to the responsible Owner as a Reimbursement Assessment. Repair or replacement performed by the Mutual pursuant to this Section 9.3 may be performed on shortened notice to the Owner, notwithstanding the repair period authorized in Section 9.7 ("Board Discretion").
- 9.4 Authority for Entry of Unit or Exclusive Use Common Area. The Mutual or its agents shall have the right to enter any Unit or any portion of Exclusive Use Common Area, whenever such entry is necessary, in the Board's discretion, for purposes of inspection and/or in connection with the performance of any maintenance, repair, construction, or replacement for which the Mutual is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less

than twenty-four (24) hours, except that in emergency situations notice shall be given as the situation reasonably permits.

- 9.5 Limitation of Mutual Liability. Except as specifically provided in Section 9.2 ("Mutual Responsibility for Exclusive Use Common Area and Units"), the Mutual shall not be responsible or liable for any maintenance, repair, or replacement of a Unit or Exclusive Use Common Area or any improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the willful misconduct or gross negligence of the Mutual, its employees, contractors, or agents.

9.6 Owner Responsibility for Maintenance.

- 9.6.1 Owner Responsibility for Units. Each Owner shall be responsible for providing maintenance, repair, and replacement of his or her Unit as set forth in the Maintenance Policies as adopted and amended by the Board from time to time.

- 9.6.2 Owner Responsibility for Exclusive Use Common Area. Each Owner shall be responsible for providing maintenance, repair, and replacement of Exclusive Use Common Area as set forth in the Maintenance Policies as adopted and amended by the Board from time to time.

- 9.6.3 Structural Integrity of Buildings. Nothing in this Section 9.6 shall be construed to permit any interference with or damage to the structural integrity of any building.

- 9.7 Board Discretion. The Board shall have the discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Project or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board pursuant to Section 11.12, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

- 9.8 Owner Liability for Negligent Damage. In the event the need for any maintenance, repair, or replacement by the Mutual is caused by the willful or negligent act or omission of an Owner or a Resident, a member of his or her household, pets, tenants, invitees, or guests, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, the Owner of the Condominium in the form of a Reimbursement Assessment.

**ARTICLE 10 DAMAGE OR DESTRUCTION OF BUILDINGS;
CONDEMNATION**

- 10.1 Owner Responsibility for Contents Insurance. As provided in the Bylaws, the Mutual is not responsible for insuring the contents of Units. Each Owner of a Unit is responsible for insuring the contents of his or her Unit. Owners may elect to obtain a property insurance policy or policies from an insurance carrier or to "self-insure" their contents. Regardless of how an Owner insures the contents of the Unit, damage to or destruction of the contents of the Unit from a property or casualty loss shall be the responsibility solely of the Unit Owner.
- 10.2 Property within a Unit but Insured by the Mutual's Policy. If damage occurs to property within a Unit which property is insured by the Mutual but is not Common Area (e.g., built-in cabinets), the insurance proceeds shall be paid to the Mutual, and the Mutual shall use the same to rebuild or repair such property. The condominium owner's contents insurance policy of the affected Owner shall be considered the primary insurance policy. In the event the insurance proceeds from all insurance coverages of the Owner and of the Mutual are insufficient to cover the complete cost of rebuilding or repair, the affected Owners shall pay and advance such additional sums to the Mutual as may be necessary to complete such rebuilding and repair.
- 10.3 Damage to Common Area. If the Common Area (including any Exclusive Use Common Area) is damaged or destroyed by fire or other casualty the Board shall: (i) prepare or cause to be prepared an estimate of loss which includes a scope of work, (ii) obtain bids from responsible contractors to restore the damaged or destroyed Common Area to its condition immediately prior to such damage or destruction (including compliance with current building code and ordinance requirements and any modifications approved by the Board), and (iii) obtain a determination of the amount of available insurance proceeds that will be recovered from the Mutual's insurance carrier(s).
- 10.4 Procedure When Insurance Proceeds Equal Eighty-Five Percent or More. 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, the insurance proceeds shall be paid to the Mutual. In the event the insurance proceeds actually received, together with reserve funds allocated for repair or replacement of damaged components, are insufficient to pay all of the costs of repairing and/or rebuilding, the Board shall levy a Special Assessment against all Unit Owners pursuant to Section 8.9 ("Special Assessments"). Upon receipt of the Special

Assessment funds the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area and, to the extent provided in Section 10.2 ("Property within a Unit but Insured by the Mutual's Policy"), any property that is not Common Area that is insured by the Mutual's policy or policies.

10.5 Procedure When Insurance Proceeds Are Less Than Eighty-Five Percent.

If the amount of available insurance proceeds is less than eighty-five (85%) percent of the cost of repairing or rebuilding the damaged property, then such insurance proceeds shall be paid to a bank, savings and loan association, or trust company designated by the Board. Said funds shall be held for the benefit of all Unit Owners and their Mortgagees, as their respective interests shall appear, pursuant to an insurance trust agreement consistent with the provisions of this Declaration, approved and executed by the Board. The Board shall, as soon as possible, call a special meeting of the Owners and First Mortgagees to consider and vote on the bids obtained, taking into account the amount of the insurance proceeds and any reserve funds allocated for repair or replacement of damaged components. An acceptable bid may be approved by a vote of not less than sixty percent (60%) of the Owners attending such meeting provided at least a majority of the Total Voting Power of the Mutual is represented, notwithstanding any lower quorum requirement that may be provided in the Bylaws. Alternatively, the Owners by vote of two-thirds (2/3) of the Total Voting Power of the Mutual may elect to sell the Project.

10.5.1 Procedure If a Bid Is Accepted. In the event a bid is accepted, the Board shall levy a Special Assessment against all Unit Owners pursuant to Section 8.9 ("Special Assessments") to make up the deficiency, if any, between the total insurance proceeds and allocated reserve funds and the contract price for such repair or rebuilding. Upon receipt of the Special Assessment funds the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area and, to the extent provided in Section 10.2 ("Property within a Unit but Insured by the Mutual's Policy"), any property that is not Common Area that is insured by the Mutual's policy or policies. It shall be the obligation of the Board to take all steps necessary to assure commencement and completion of authorized repair or rebuilding at the earliest possible date. All insurance proceeds, including any subject to liens of Mortgagees, shall be used for such rebuilding or repair. The contractor shall provide a completion bond naming the Mutual and each Owner as Beneficiaries.

10.5.2 Procedure If All Bids Are Rejected and No Vote to Sell. In the event all bids are rejected but the Owners have not voted to sell

the Project, the Board shall recommend such alternative reconstruction of the damaged or destroyed property at a lesser cost as it deems reasonable or adequate, which alternatives shall be placed to bid and the bids presented for a vote of the Owners and First Mortgagees in the manner described above. In the event that no such alternative is accepted by the Owners or if repair or rebuilding has not commenced within one (1) year after the date of the damage or destruction, the Board is hereby empowered, as the agent and attorney-in-fact for all Owners, to sell the entire Project in its then present condition, on terms satisfactory to the Board.

- 10.6 Sale of Entire Project. In the event of the sale of the entire Project, 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 square footage of the Units as set forth is Exhibit D. The members of the Board are hereby authorized to execute and deliver, in behalf of all of the Owners, any instruments necessary or required to effect 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 effect such sale or sales.
- 10.7 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 Project), 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 11 ENFORCEMENT; NOTICE; HEARINGS

- 11.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Mutual or its Officers or Board of Directors or by any Owner; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board

determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Mutual and its Members as a whole. Notwithstanding the preceding sentence and without limiting the generality of the proviso therein, nothing in the Governing Documents shall be deemed to impose upon the Mutual, the Board, or the officers, employees, or agents of the Mutual a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.

- 11.2 Violation of Law is a Violation of the Declaration. Any violation of a state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 11.3 Owner Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household, Contract Purchasers, tenants, invitees, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, and any Governing Document violation of any of them, and for any damage to the Project or the Mutual resulting from the negligent or intentional conduct of any of them or the conduct of any pet belonging to any of them. If a Condominium is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several. The foregoing provisions of this Section 11.3 are in addition to and shall not limit the generality of the provisions of Section 5.4.3 ("Indemnification Regarding Business Activity"); Section 5.13 ("Animals"), Sections 6.6 ("Mutual as Third Party Beneficiary") and Section 6.7 ("Indemnification Regarding Tenant's Actions"), and Section 7.17 ("Disclaimer of Liability").
- 11.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Unit.
- 11.5 Enforcement Rights Are Cumulative. The Mutual, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or, with respect to action by the Mutual, through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.
- 11.6 Injunctions. Except for the non-payment of any Assessment levied pursuant to the provisions of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the

breach or violation of any such provisions is inadequate and that the failure of any Owner, Contract Purchaser, member of his or her household, tenants, invitee, guest, or household pets or any other occupant or user of any of the property within the Project to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Mutual, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.

11.7 Limitation on Mutual's Disciplinary Rights. The Mutual shall not have the power and authority to cause a forfeiture or abridgment of an Owner's right to the full use and occupancy of his or her Unit as the result of the failure by such Owner, members of his or her household, Contract Purchaser, tenants, invitees, guests or pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Mutual pursuant to this Declaration and except to the extent of the Mutual's rights pursuant to Section 8.18 ("Assignment of Rents as Security for Payment"). The provisions of this Section 11.7 shall not affect the Mutual's right to impose other sanctions including imposing Enforcement Assessments as provided in Section 11.8.

11.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing called by the Board and conducted in accordance with this Article 11, the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or Additional Charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of good standing, suspension of other rights, and/or monetary penalties (fines), as described below.

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

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

- 11.8.3 Monetary Penalties. The Board may impose monetary penalties or fines as Enforcement Assessments in accordance with a schedule adopted by the Board and distributed to the Members. Any change in the amount of a fine shall be deemed a Rule change pursuant to *Civil Code* section 1357.100 *et seq.*
- 11.8.4 Monthly Sanctions for Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner fails to remedy the violation after notice from the Board to do so, the Board may impose sanctions, including monetary penalties, such sanctions to remain in effect for a period of one month or until the continuing violation is remedied, whichever occurs sooner. If the continuing violation has not been remedied within the one month period, the Board may impose separate and successive sanctions for the continuing violation, provided the Board conducts a separate hearing, not more frequently than once a month, before imposing each successive sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous hearing relating to the subject continuing violation.
- 11.8.5 Reimbursement Assessment Not a Sanction. The imposition of a Reimbursement Assessment pursuant to the Declaration does not constitute and shall not be deemed to be a sanction.
- 11.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or a Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter. If the Board decides not to pursue a matter it shall notify the complaining party in writing stating the reason(s) for its decision.
- 11.10 Written Notice of Violation. If the Board determines, whether on its own initiative or pursuant to a written complaint, that a violation of the Governing Documents exists or has occurred, it shall notify the responsible Owner(s) by written notice in compliance with Section 11.11.
- 11.11 Notices: Content, Delivery. Any notices required or given under this Article 11 shall be in writing and shall, at a minimum, comply with any applicable statutes as to content and as to time and method of service. If no specific statutory requirements apply, any notice given by the Mutual to a Member shall, at a minimum, set forth a brief description of the act or omission constituting the alleged violation of the Governing Documents; a reference to the specific Governing Document provision or provisions alleged to have been violated; if applicable, a statement that the Member

may request a hearing by the Board; the date, time, and location of any hearing called by the Board; and any sanction, disciplinary action, or other enforcement action being contemplated by the Board. If no specific statutory requirements apply, any notice may be given by any method reasonably calculated to give actual notice to the affected Member or the Mutual, as the case may be; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid and, if given by the Mutual to a Member, it shall be sent to the most recent address for the affected Member as shown on the records of the Mutual.

11.12 Hearings Called By the Board; Executive Session; Open Meeting.

Whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) at least ten (10) days before the Board meeting at which the matter will be considered. If the matter concerns Member discipline or the imposition of sanctions, the Board shall meet in executive session if requested by the Member, unless (and then only to the extent) applicable law requires that certain actions by the Board be conducted at an open meeting of the Board, such as *Civil Code* section 1367.1(c)(2) concerning a decision to record a lien for delinquent Assessments. If the matter concerns compliance with architectural approval requirements, the hearing shall be conducted in open meeting pursuant to *Civil Code* section 1378(a)(5). In the Board's discretion, other interested person(s) may attend a hearing and may present information relevant to the subject matter of the hearing. If a notified Owner fails to attend a noticed hearing, the Board may nevertheless conduct its deliberations and make a determination based on its own investigation and any other information supplied to it that the Board deems reasonably reliable.

11.13 Owner Request for Hearing. An Owner who has received a notice of violation sent pursuant to Section 11.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 11.15 ("Enforcement by Mutual in Emergency Situations") or as otherwise provided in the Governing Documents, may request a hearing before the Board by submitting a written request to the Board. If an Owner is requesting a meeting to discuss a payment plan for a past due debt owed to the Mutual, the meeting shall be scheduled and conducted as provided in Section 8.15.3 ("Owner's Right to Discuss Payment Plan"). If the Owner is requesting a hearing concerning a notice of violation sent pursuant to Section 11.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 11.15 ("Enforcement by Mutual in Emergency Situations"), the request for hearing must be submitted within ten (10) days after the date of such notice. The Board shall schedule a hearing at its next regular meeting that is at least five (5) days after its receipt of an Owner's request for hearing or, in the Board's discretion, at another time agreed by the Board and the Owner. Hearings shall be conducted in executive session or at an open meeting as provided in Section 11.12.

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

11.15 Enforcement by Mutual in Emergency Situations.

11.15.1 Definition of Emergency Situation. For purposes of this Section 11.15, the following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Project, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Project or any portion thereof, (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

11.15.2 Immediate Corrective Action. Notwithstanding any other provisions of the Governing Documents, under circumstances that constitute an emergency, the Board or its duly authorized agents may undertake immediate corrective action. The Board shall promptly thereafter send written notice of the corrective action to the affected Owner including notice of any Reimbursement Assessment assessed to the Owner for costs incurred by the Mutual in connection therewith. If the Owner requests a hearing pursuant to Section 11.13 ("Owner Request for Hearing"), enforcement of any Reimbursement Assessment imposed by the Board shall be held in abeyance and shall be pursued only if affirmed by the Board at the hearing.

11.16 Internal Dispute Resolution.

11.16.1 Fair, Reasonable, and Expeditious Procedure. The provisions of Article 7 ("Architectural Approval") and of Section 11.9 ("Investigation of Complaints") through Section 11.15 ("Enforcement by Mutual in Emergency Situations"), are intended to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Mutual and any Member that are subject to *Civil Code* section 1363.810 through 1363.850 (which applies to, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents). The above-referenced provisions of the Declaration shall constitute the

Mutual's "internal dispute resolution" process as required by *Civil Code* section 1363.820.

11.16.2 Statutory Default Procedures. If the Mutual shall fail to comply with the Mutual's internal dispute resolution process, then the Mutual and the affected Member shall abide by the statutory default procedures provided in *Civil Code* section 1363.840, or successor statute. Any resolution so agreed upon by the parties thereto, that is not in conflict with the law or the Governing Documents, shall bind the parties and shall be judicially enforceable as provided in *Civil Code* section 1363.830.

11.16.3 Alternative Dispute Resolution May Also Apply. If (a) the subject matter of the dispute (including, among other things, enforcement of applicable provisions of the Corporations Code and enforcement of the Governing Documents) and the remedy sought (including certain kinds of declaratory, injunctive, or writ relief, which may be in conjunction with certain limited monetary relief, but excluding small claims actions and excluding Assessment disputes) are subject to *Civil Code* section 1369.510 *et seq.* and (b) the Mutual and the affected Member do not agree on a resolution through the foregoing internal dispute resolution process provided for in Section 11.16.1, then no party to the dispute may pursue a civil remedy that is subject to *Civil Code* section 1369.510 *et seq.*, without first complying with the "alternative dispute resolution" procedures set forth in that statute and referenced in Section 11.17.

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

11.17 Alternative Dispute Resolution Before Initiating Lawsuit.

11.17.1 When ADR Applies. The requirements of this Section 11.17 apply to civil action or proceedings as defined in *Civil Code* section 1369.510(b) when the remedy sought is solely for declaratory, injunctive, or writ relief or if for the foregoing relief in conjunction with monetary damages not in excess of \$5,000, as provided in *Civil Code* section 1369.520(b). *Civil Code* sections 1369.510 *et seq.* applies to disputes between Members as well as to disputes between the Mutual and a Member. The ADR requirements of this Section 11.17 do not apply to Assessment disputes or to an action in small claims court.

- 11.17.2 Statutory ADR Process. In accordance with *Civil Code* section 1369.510 *et seq.*, the Mutual, or an Owner or a Member may not file an "enforcement action" as defined in the statute unless the parties have endeavored to submit their dispute to "alternative dispute resolution" as the term is defined in *Civil Code* section 1369.510(a) and as the process is specified in *Civil Code* section 1369.530, 1369.540, and 1369.550.
- 11.17.3 Annual Summary of Alternative Dispute Resolution Process. In accordance with *Civil Code* section 1369.590, the Mutual shall annually provide the Members with a summary of the provisions of *Civil Code* section 1369.510 *et seq.* including the statement specified in *Civil Code* section 1369.590(a), and including a description of the Mutual's internal dispute resolution process as required by *Civil Code* section 1363.850.
- 11.18 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.
- 11.19 Costs and Attorneys' Fees. In the event the Mutual shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, Contract Purchaser, member of his or her household, tenants, invitees, guests, or pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Mutual shall, to the fullest extent permitted by law, be entitled to recover the full amount of all costs including attorneys' fees incurred by the Mutual in responding to such violation and/or in enforcing any Governing Document provision. In awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith. The remedies of the Mutual to recover the amount of such costs, expenses, and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment.

ARTICLE 12 AMENDMENT

- 12.1 Required Member Approval. This Declaration may be amended by the affirmative vote or written consent of Members representing at least a majority of the Total Voting Power of the Mutual; *provided, however*, that, upon advice of legal counsel licensed to practice law in the State of California including the drafting by legal counsel of appropriate amendatory provisions, the Board shall have the authority without the

requirement of Member approval to amend any provision of the Declaration (i) to resolve any conflict between the Declaration and applicable law which may arise due to the enactment or amendment of a statute or due to a development in applicable case law or (ii) to conform the provisions of the Declaration to changes in applicable statutory law that impose requirements that are non-discretionary in nature.

- 12.2 Amendment Must Be Recorded. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Mutual and recorded in the Office of the County Recorder.

ARTICLE 13 GENERAL PROVISIONS

- 13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 13.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Project for the benefit of the community.
- 13.4 Amendment to Referenced Statutes; Time for Performance. References in the Declaration 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. Whenever this Declaration states a time for the performance of any act by the Mutual which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.
- 13.5 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 13.6 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Mutual by the Owners and each of them.

- 13.7 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Units and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Mutual, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six months prior to the expiration of the initial thirty (30) year term or any ten (10) year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Mutual, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Contra Costa County, California.

IN WITNESS WHEREOF, we, the Members of Walnut Creek Mutual No. 59, by the affirmative vote or written consent of at least three-fourths (3/4) of the Members and by means of the signatures of the President and the Secretary, do hereby affirm, approve, and adopt the foregoing Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 59, in accordance with Article XVI, paragraph 1 of the Original Declaration, which Amended Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Contra Costa County, California.

DATED: December 21, 2006, WALNUT CREEK MUTUAL NO. FIFTY-NINE

Kelvin Booty
Kelvin Booty, President

Sara Cornell
Gresa Bent, Secretary
Sara Cornell

EXHIBIT A**(Recital Paragraph A; Section 1.30)****List of Recorded Documents Superseded by
This Declaration****Phase I**

Agreement Establishing Covenants, Conditions and Restrictions for Walnut Creek Mutual 59, Tract 7169, recorded August 18, 1992, as Instrument No. 92-206914;

Declaration of Covenants, Conditions and Restrictions for Walnut Creek Mutual 59 (Tract 7169), recorded August 18, 1992, as Instrument No. 92-206915; and

Amendment of Declaration of Covenants, Conditions and Restrictions, recorded November 5, 1992, as Instrument No. 92-293353.

Phase II

Agreement Establishing Covenants, Conditions and Restrictions for Walnut Creek Mutual 59, Tract 7169, recorded November 5, 1993, as Instrument No. 93-314428; and

Declaration of Covenants, Conditions and Restrictions for Tract 7169, Mutual 59, Lot 2, Buildings 5904, 5905, & 5906, recorded November 5, 1993, as Instrument No. 93-314429;

all in the Official Records of Contra Costa County, California.

EXHIBIT B**(Section 1.11)****List of Recorded Condominium Plans
for Walnut Creek Mutual No. 59****Phase I**

Condominium Plan for Walnut Creek Mutual No. 59, Lot No. 1, Subdivision 7169, and Certificate Under California Civil Code §1351, recorded August 18, 1992, as Instrument No. 92-206916; and

Phase II

Condominium Plan for Walnut Creek Mutual No. 59, Lot No. 2, Subdivision 7169, and Certificate Under California Civil Code §1351, recorded November 5, 1993, as Instrument No. 93-314430,

all in the Official Records of Contra Costa County, California.

EXHIBIT C**(Section 1.17; Section 3.7; Section 4.11)****Lists and Schematic Drawings of
Parking Spaces and Golf Cart Parking Spaces****5910 Horseman's Canyon Drive**

Space Numbers as depicted on schematic drawing of building

Parking Space Number **Appurtenant to Unit**

4	1A
5	1B
6	1C
7	2A
8	2B
9	2C
10	3A
14	3B
15	3C
18	4A
17	4B
18	4C
19	5A
20	5B
21	5C
22	6A
23	6B
24	6C

Non-Appurtenant Parking Spaces

1 & 2 (Handicap Parking)
3, 11, 12, 13, 25, 26, 27

Golf Cart Parking Spaces

1, 2, 3, 4, 5, 6, 7

051690

5910 Horseman's Canyon Dr.

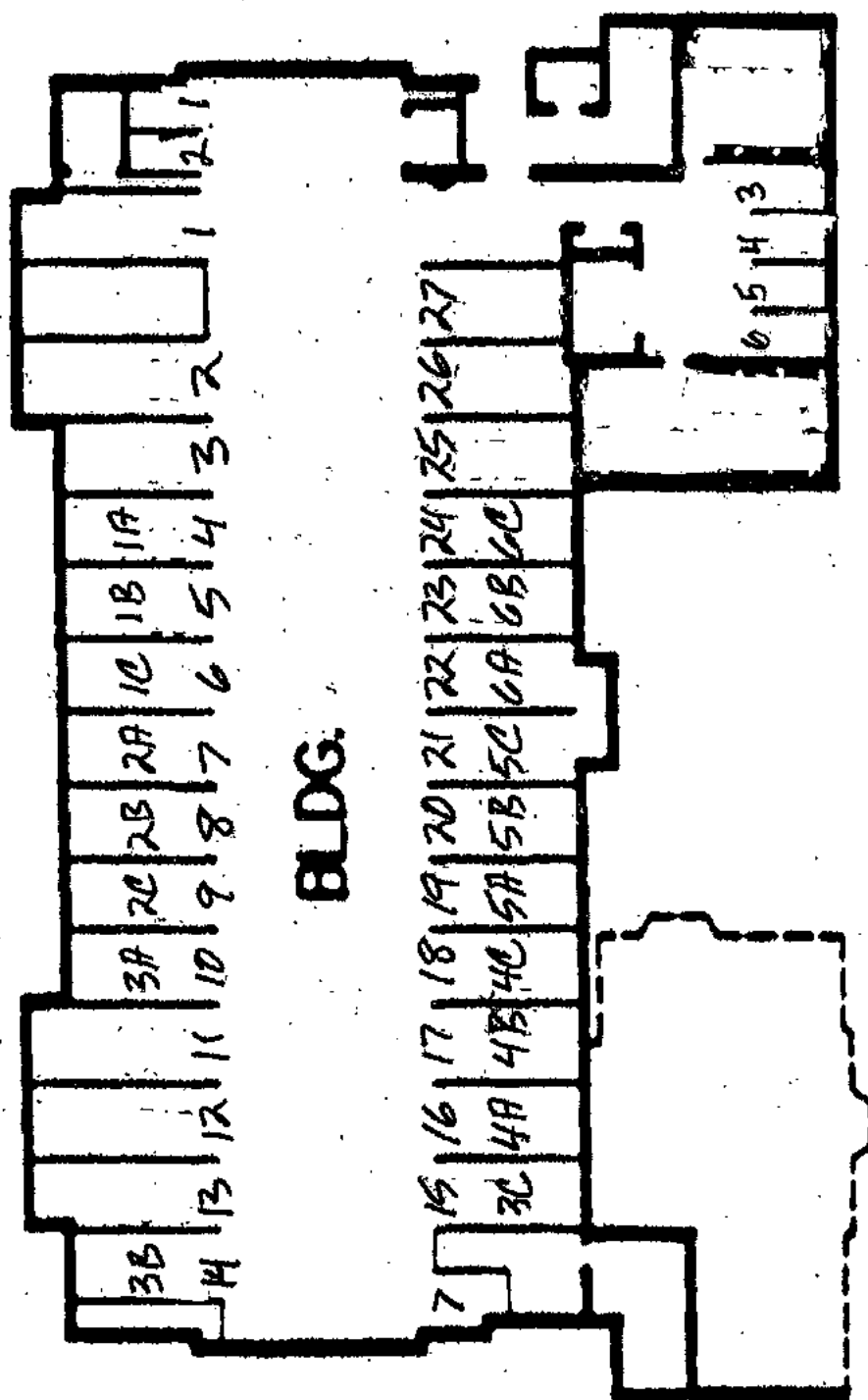


Exhibit C (continued)

5913 Horseman's Canyon Drive

Space Numbers as depicted on schematic drawing of building

<u>Parking Space Number</u>	<u>Appurtenant to Unit</u>
58	1A
59	1B
60	1C
61	2A
62	2B
63	2C
64	3A
68	3B
69	3C
70	4A
71	4B
72	4C
73	5A
74	5B
75	5C
76	6A
77	6B
78	6C

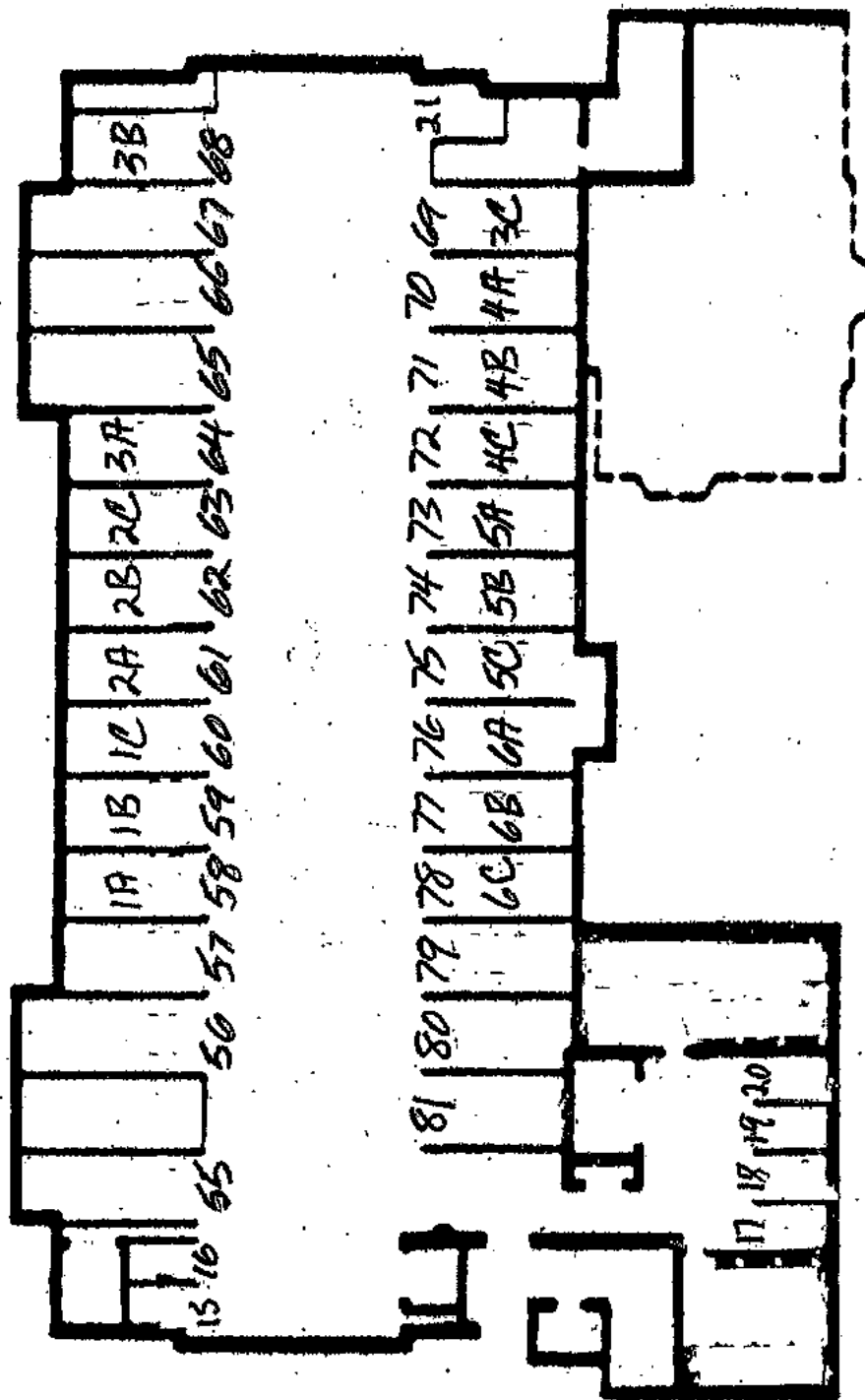
Non-Appurtenant Parking Spaces

55 & 56 (Handicap Parking)

57, 65, 66, 67, 79, 80, 81

Golf Cart Parking Spaces

15, 16, 17, 18, 19, 20, 21



5913 Horseman's Canyon

5920 Horseman's Canyon Drive

Space Numbers as depicted on schematic drawing of building

<u>Parking Space Number</u>	<u>Appurtenant to Unit</u>
-----------------------------	----------------------------

31	1A
32	1B
33	1C
34	2A
35	2B
36	2C
37	3A
41	3B
42	4C
43	4A
44	4B
45	3C
38 & 46	5A
47	5B
48	5C
49	6A
50	6B
51	6C

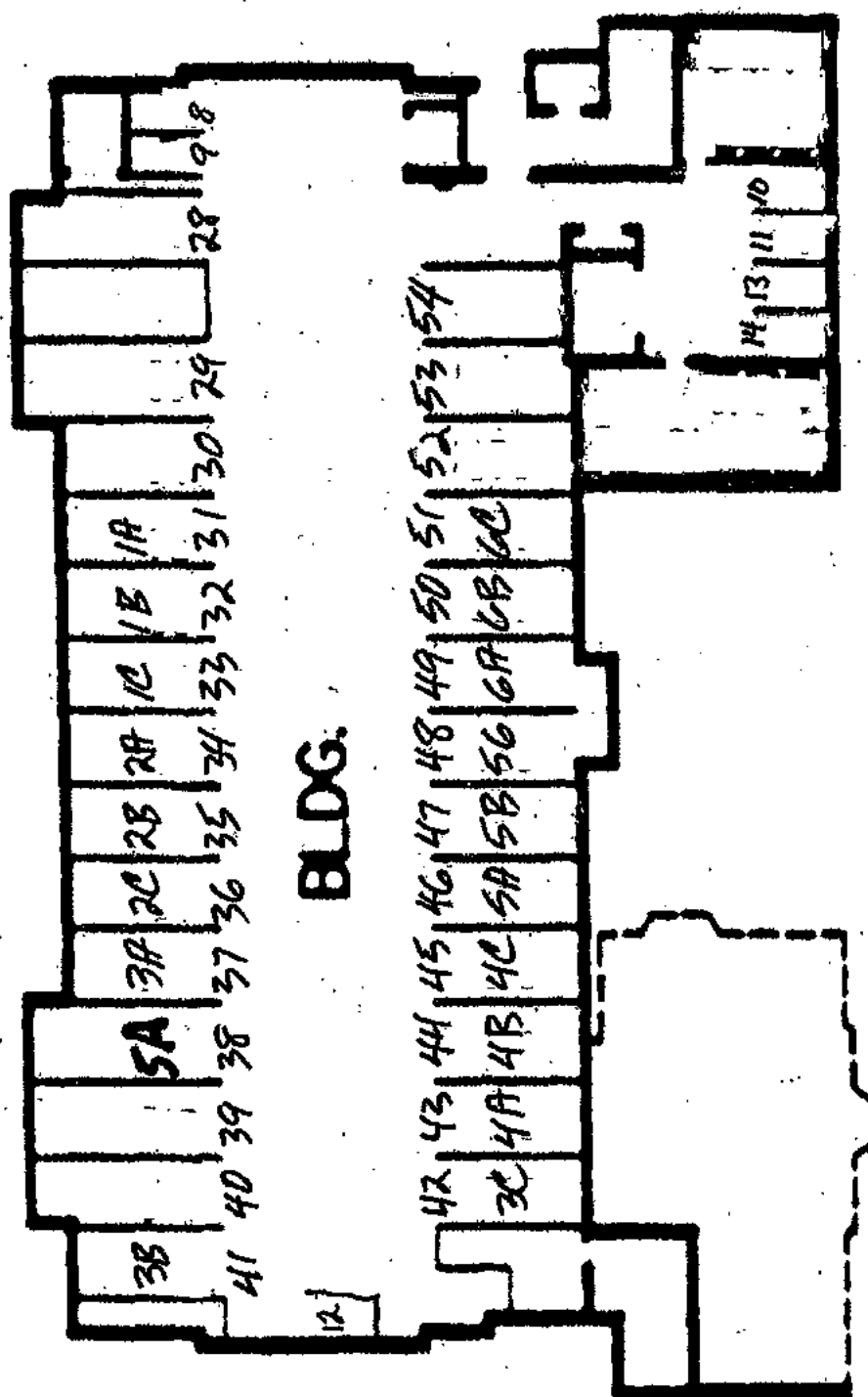
Non-Appurtenant Parking Spaces

28 & 29 (Handicap Parking)

30, 39, 40, 52, 53, 54

Golf Cart Parking Spaces8*, 9*, 10, 11, 12*, 13, 14

(asterisk * denotes not sold or granted by Declarant as referenced in Section 4.11)



051690

5920 Horseman's Canyon Dr.

Exhibit C (continued)

5951 Autumnwood Drive

Space Numbers as depicted on schematic drawing of building

<u>Parking Space Number</u>	<u>Appurtenant to Unit</u>
31	1A
32	1B
33	1C
34	2A
35	2B
36	2C
37	3A
41	3B
42	4C
43	4A
44	4B
45	3C
46	5A
47	5B
48	5C
49	6A
50	6B
51	6C

Non-Appurtenant Parking Spaces

28 & 29 (Handicap Parking)

30, 38, 39, 40, 52, 53, 54

Golf Cart Parking Spaces8, 9*, 10, 11, 12*, 13, 14*(asterisk * denotes not sold or granted by Declarant as referenced in Section 4.11)

Exhibit C (continued)

5954 Autumnwood Drive

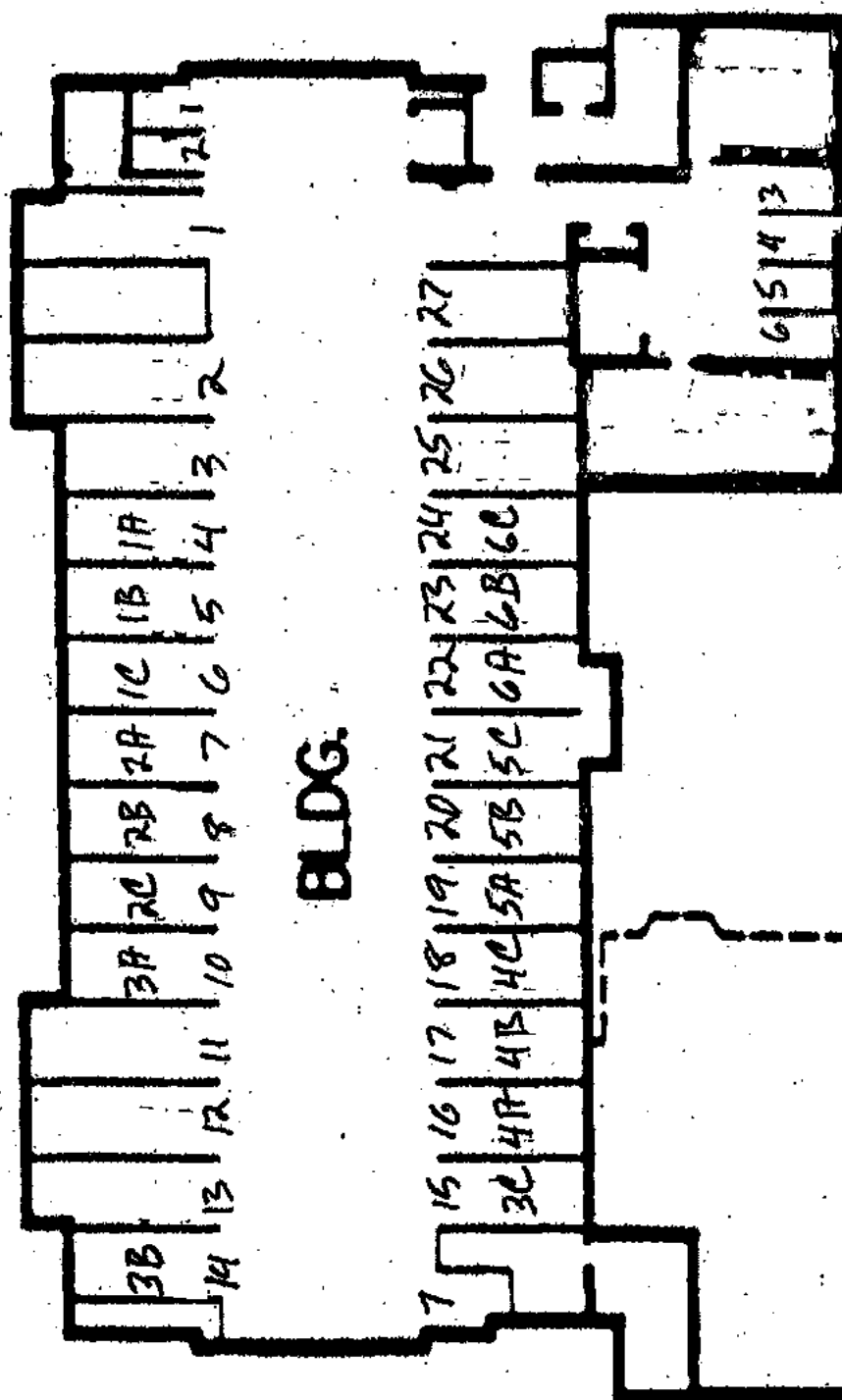
Space Numbers as depicted on schematic drawing of building

<u>Parking Space Number</u>	<u>Appurtenant to Unit</u>
4	1A
5	1B
6	1C
7	2A
8	2B
9	2C
10	3A
14	3B
15	3C
16	4A
17	4B
18	4C
19	5A
20	5B
21	5C
22	6A
23	6B
24	6C

Non-Appurtenant Parking Spaces

1 & 2 (Handicap Parking)

3, 11*, 12*, 13, 25, 26, 27**Golf Cart Parking Spaces**1*, 2*, 3, 4, 5, 6, 7*(asterisk * denotes not sold or granted by Declarant as referenced in Section 4.11)



5954 Autumnwood

Exhibit C (continued)

5961 Autumnwood Drive

Space Numbers as depicted on schematic drawing of building

<u>Parking Space Number</u>	<u>Appurtenant to Unit</u>
1	1A
2	1B
3	1C
4	2A
5	2B
6	2C
7	3A
8	3B
9	3C
10	4A
15	4C
16	5A
17	5B
18	5C
19	6A
20	6B
21	6C
24	4B

Non-Appurtenant Parking Spaces12, 13, 14, 22*, 23*Golf Cart Parking Spaces1*, 2*, 3*, 4*, 5*

(asterisk* denotes not sold or granted by Declarant as referenced in Section 4.11)

Note: there is no parking space number 11 in this building.

051690

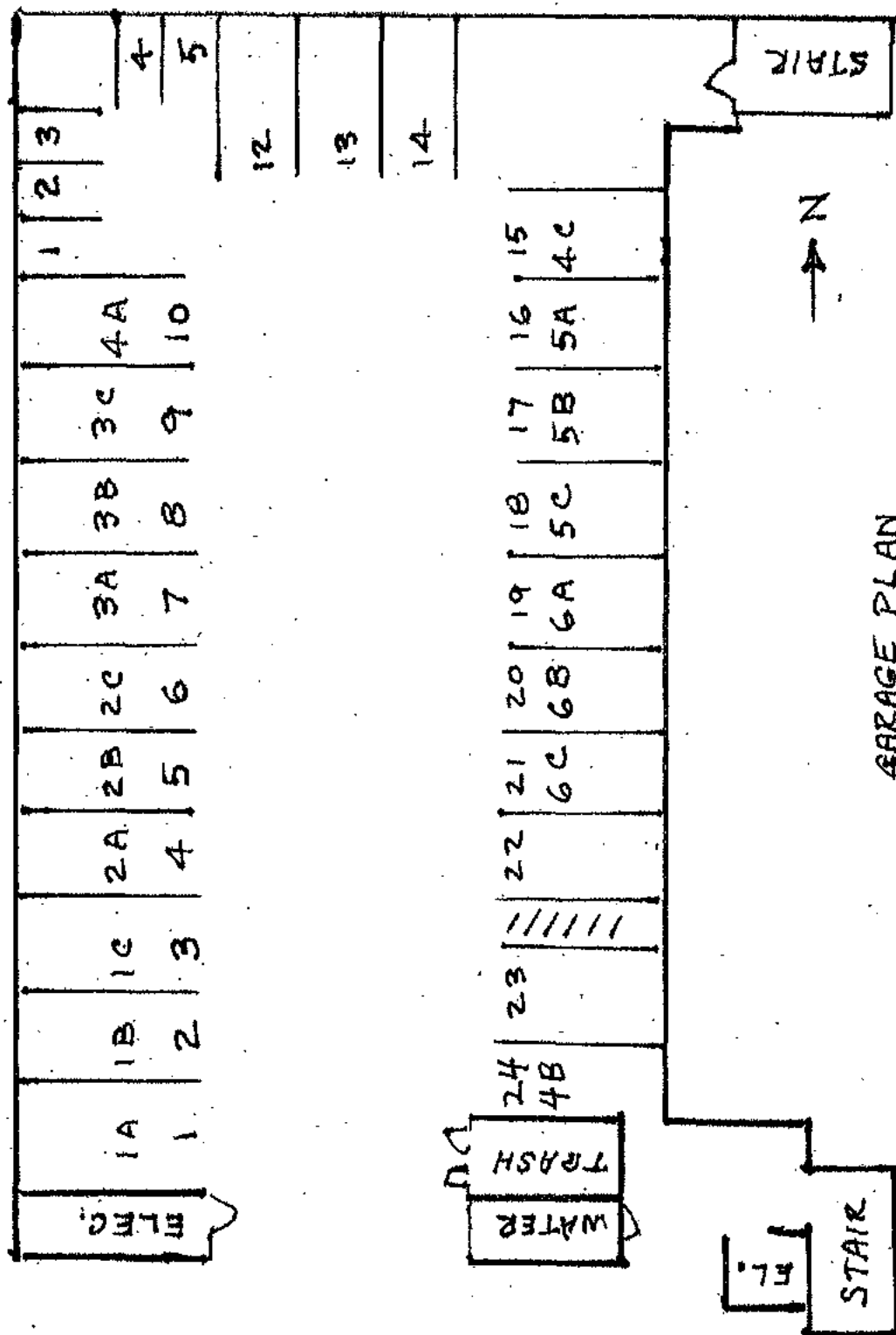


EXHIBIT D**(Section 10.6)**

**Square Footage of Units
by Builder's Floor Plan
as Percentage of Total Square Footage of All Units**

The figures set forth in this exhibit shall control over any figures based on actual measurement of the Units.

5910, 5913, and 5920 Horseman's Canyon Drive and 5951 and 5954 Autumnwood Drive

Units 1 & 6 A, B, C	(Panorama)	1414 sq.ft.	.008498% x 30 units =	.25494
Units 2 & 5 A, B, C	(Summit)	1923 sq.ft.	.011557% x 30 units =	.34671
Units 3 & 4 A, B, C	(Woodside)	1241 sq.ft.	.007458% x 30 units =	.22374

5961 Autumnwood Drive

Units 1 & 6 A, B, C	(Panorama)	1416 sq.ft.	.008510% x 6 units =	.05106
Units 2 & 5 A, B, C	(Vista)	1784 sq.ft.	.010722% x 6 units =	.06433
Units 3 & 4 A, B, C	(Lassen)	1640 sq.ft.	.009856% x 6 units =	<u>.05913</u>
				.99991

051690

CERTIFICATE OF ACKNOWLEDGMENT

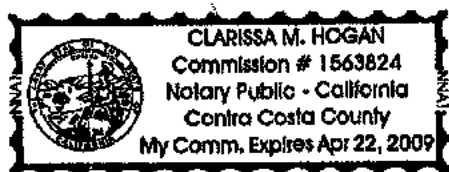
STATE OF CALIFORNIA

COUNTY OF Contra Costa) ss.

On 12-21-06, before me, Clarissa M. Hogan, Notary Public,
personally appeared Kelvin Booty,
personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Clarissa M. Hogan (Seal)



CERTIFICATE OF ACKNOWLEDGMENT

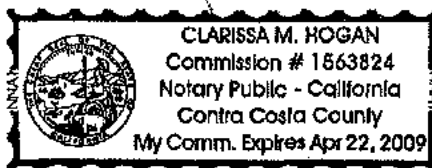
STATE OF CALIFORNIA

COUNTY OF Contra Costa

) ss.

On 12-21-06, before me, Clarissa M Hogan Notary Public,
 personally appeared Sara Cornejo,
 personally known to me (or proved to me on the basis of satisfactory evidence) to be
 the person(s) whose name(s) is/are subscribed to the within instrument and
 acknowledged to me that he/she/they executed the same in his/her/their authorized
 capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
 the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Clarissa M Hogan (Seal)

END OF DOCUMENT

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

WALNUT CREEK MUTUAL NO. FIFTY-NINE
c/o Hughes Gill Cochrane, P.C.
Attn: Stephanie J. Hayes, Esq.
1600 South Main Street, Suite 215
Walnut Creek, CA 94596

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2012-0133123-00

Check Number 7403
Tuesday, JUN 05, 2012 12:33:00
MOD \$4.00 REC \$14.00 FTC \$3.00
RED \$1.00 ERD \$1.00
Ttl Pd \$23.00 Rcpt # 0001292625
cnb/R1/1-4

**FIRST AMENDMENT TO AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
WALNUT CREEK MUTUAL NO. FIFTY-NINE**

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

RECITALS

A. WHEREAS, an instrument entitled "Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Fifty-Nine" was recorded on February 21, 2007 as Document No. 2007-0051690 in the Official Records of Contra Costa County, California (the "Declaration").

B. WHEREAS, the Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in those certain parcels of real property located in the City of Walnut Creek, Contra Costa County, State of California and described as follows:

Lot 1 and Lot 2 as shown on that certain Map of Subdivision 7169, Mutual 59, filed on July 29, 1992 in Book 362 of Maps at Pages 24 through 27, in the Official Records of Contra Costa County.

C. WHEREAS, all of the real property described herein, including all improvements thereon, constitute a "condominium project" within the meaning of California Civil Code section 1351(f).

D. WHEREAS, the Mutual desires to amend the Declaration as set forth below.

E. WHEREAS, pursuant to Article 12.1 of the Declaration, the Declaration may be amended with the approval of Members representing at least a majority of the Total Voting Power of the Mutual.

F. WHEREAS, all approvals required to amend the Declaration have been obtained.

NOW, THEREFORE, the Mutual amends the Declaration as set forth in this First Amendment.

1. Section 10.1 of the Declaration (entitled "Owner Responsibility for Contents Insurance") shall be deleted in its entirety and the following Section 10.1 (entitled "Damage to a Unit or Units") shall be inserted in its place:

10.1 Damage to a Unit or Units. As set forth in Section 9.6 of the Bylaws, each Unit Owner is responsible for insuring the contents of his or her Unit. Regardless of the insurance carried by the Unit Owner, damage to or destruction of the contents of the Unit from a property or casualty loss shall be the complete and total responsibility of the Unit Owner. If damage occurs to property within the Unit that is insured by the Mutual pursuant to Section 9.2.1(ii) of the Bylaws, the insurance proceeds shall be paid to the Mutual, and the Mutual shall use same to rebuild or repair such property. In the event the insurance proceeds and available Mutual funds are insufficient to cover the complete cost of repair of such property, the Board shall levy a Special Assessment against all Owners in the amount necessary to complete the repairs to the damaged property.

2. Section 10.2 of the Declaration (entitled "Property within a Unit but Insured by the Mutual's Policy") shall be deleted in its entirety.

3. Unless otherwise expressly provided herein to the contrary, capitalized terms not defined in this First Amendment shall have the meanings ascribed to them in the Declaration, unless the context clearly requires otherwise.

4. In all other respects the provisions of the Declaration are deemed to remain in full force and effect except as herein modified.

IN WITNESS WHEREOF, the undersigned duly authorized officers of WALNUT CREEK MUTUAL NO. FIFTY-NINE hereby certify that this First Amendment has been approved, in accordance with Section 12.1 of the Declaration, by Members representing at least a majority of the Total Voting Power of the Mutual.

WALNUT CREEK MUTUAL NO. FIFTY-NINE

Dated: 5/29, 2012

By: Mary Jane Hargrove
Mary Jane Hargrove, President

Dated: 5/30, 2012

By: Victor Vigil
Victor Vigil, Secretary

ACKNOWLEDGMENT

STATE OF CALIFORNIA

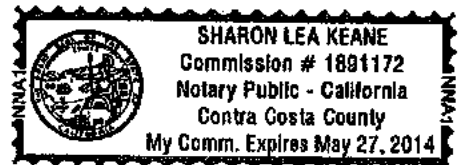
COUNTY OF Contra Costa

On 5-29-12, before me, Sharon Lea Keane, Notary Public, personally appeared, Mary Jane Hargrove, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharon Lea Keane (Seal)



ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Contra Costa

On 5-30-12 before me, Sharon Lea Keane, Notary Public, personally appeared, Victor Vigil, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharon Lea Keane

(Seal)



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