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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
WALNUT CREEK MUTUAL NO. SIXTY-ONE**

NOTICE OF RENTAL RESTRICTION

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

Please note that Walnut Creek Mutual No. Sixty-One has a twenty-five percent (25%) (16 Lot) rental cap. Written approval of the Board is required to lease a Lot and Residence. You are directed to review the restrictions contained in Article 5 of these CC&Rs.

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
WALNUT CREEK MUTUAL NO. SIXTY-ONE

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

RECITALS

A. WHEREAS, the Mutual is the successor in interest to UDC HOMES, INC., a Delaware corporation, which, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Sixty-One, Heritage Oak, A Common Interest Development, dated July 31, 1998, and recorded on August 7, 1998, as Document No. 98-187451 in the Official Records of Contra Costa County, California (the "1998 Declaration");

B. WHEREAS, an Agreement Establishing Covenants, Conditions and Restrictions dated July 16, 1998 was recorded as Exhibit "B" to the 1998 Declaration (the "Establishing Declaration");

C. WHEREAS, the 1998 Declaration, including the Establishing 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 parcel of real property located in the City of Walnut Creek, County of Contra Costa, State of California, and more particularly described as follows:

Lots 1 through 63, inclusive, and Parcels A through Q, inclusive, as shown on the map of Subdivision 8054, filed for record on May 5, 1998, in Book 399 of Maps at Page 36 et seq., in the Official Records of the County of Contra Costa, State of California.

D. WHEREAS, the Members, constituting the requisite number of Members of the Mutual, desire to amend, modify, and otherwise change the 1998 Declaration pursuant to Article XI, Section 11.1 thereof and the Establishing Declaration pursuant to Paragraph 13B thereof;

E. NOW, THEREFORE, pursuant to Section 11.1 of the 1998 Declaration and Paragraph 13B of the Establishing Declaration, the Members, constituting the requisite number of Members of the Mutual, do hereby declare that the aforesaid 1998 Declaration and Establishing Declaration be and hereby are, AMENDED AND RESTATED IN THEIR ENTIRETY as set forth within this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Sixty-One. This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Sixty-One replaces and supersedes all previously-recorded Declarations of Covenants, Conditions and Restrictions of Walnut Creek Mutual Sixty-One;

F. IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a "planned development" within the meaning of *Civil Code* section 4175;

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

H. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in *Civil Code* section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

ARTICLE 1

DEFINITIONS

1.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by

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

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

1.3 Architectural Committee. "Architectural Committee" and "AC" shall mean the Architectural Committee, if any, created pursuant to Article 7 of this Declaration and Article 10 of the Bylaws.

1.4 Articles. "Articles" shall mean the Articles of Incorporation of Walnut Creek Mutual No. Sixty-One, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessment, Special Assessments, and Reimbursement Assessments.

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

1.7 Bylaws. "Bylaws" shall mean the Amended and Restated Bylaws of Walnut Creek Mutual No. Sixty-One and any duly adopted amendments thereto.

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

1.9 City. "City" shall mean the City of Walnut Creek.

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

1.11 Common Area. "Common Area" shall mean all real and personal property, improvements, and airspace owned by the Mutual for the common use and enjoyment of the Owners and Residents of the Development, including but not limited to: private streets, walkways, sidewalks, and driveways; mailboxes; the emergency storage shed; and open space. The Common Area is comprised of Parcels A through Q, inclusive, as shown on the Map, and all improvements located thereon.

1.12 County. "County" shall mean the County of Contra Costa.

1.13 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Sixty-One, recorded in the Office of the County Recorder of Contra Costa

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AMENDED AND RESTATED DECLARATION
WALNUT CREEK MUTUAL NO. SIXTY-ONE

County, California, and any amendments thereto. The Declaration may also be referred to as the "CC&Rs."

1.14 Designated Parking Areas. "Designated Parking Areas" shall mean areas in the Common Area established and designed for the parking of motor vehicles.

1.15 Development. "Development" shall mean all the real property described in this Declaration which comprises the Walnut Creek Mutual No. Sixty-One planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Mutual.

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

1.17 Foundation's Governing Documents. "Foundation's Governing Documents" shall mean, collectively, the Foundation's articles of incorporation, trust agreement, and bylaws, as amended from time to time, and any policies and resolutions adopted by the Foundation's board of directors and distributed to the Foundation's members.

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

1.19 Landscape Maintenance Area. "Landscape Maintenance Area" shall mean the street facing unenclosed portions of each Lot and also the side portions of the Lots between two Residences. Each Landscape Maintenance Area includes all landscaping within the Landscape Maintenance Area and the landscape irrigation systems and components for the Landscape Maintenance Area, including wiring, automatic valves, controllers and timers, wherever located.

1.20 Lot. "Lot" shall mean a "separate interest" as defined in *Civil Code* section 4185 and any plot of land shown upon any recorded Subdivision Map of the Development upon which a Residence has been constructed. There are 63 Lots in the Development.

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

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

1.23 Member. "Member" shall mean an Owner.

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

1.25 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.

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

1.27 Mutual. "Mutual" shall mean Walnut Creek Mutual No. Sixty-One, its successors, and assigns.

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

1.29 Party Fence. "Party Fence" shall mean any portion of a fence which is constructed and placed approximately on the common boundary of two (2) or more Lots.

1.30 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.9.

1.31 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.

1.32 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.

1.33 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.

1.34 Resident. "Resident" shall mean any person who resides on a Lot within the Development and is not a guest or invitee, whether or not such person is an Owner as defined in Section 1.28, above.

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

1.36 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.7.

1.37 Subdivision Map. "Subdivision Map" or "Map" shall be that certain Map of Subdivision 8054, recorded May 5, 1998, in Book 399 of Maps at Pages 36 *et seq.*, in the Office of the County Recorder of Contra Costa County.

1.38 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 Lot, excluding any Lot as to which an Owner is not then a Member in Good Standing.

ARTICLE 2

MUTUAL; FOUNDATION

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

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

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

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

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

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

2.7 Membership in the Foundation. Membership in the Foundation is distinct from membership in the Mutual and shall be as determined by the Foundation pursuant to its duly adopted articles of incorporation, bylaws, and/or other applicable instruments.

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

2.9 Acquisition of Property. The Board, acting on behalf of the Mutual, shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, and maintain real or personal property in connection with the affairs of the Mutual; provided, however, that in any fiscal year acquisitions by purchase of items not included in the reserve budget shall not exceed five percent (5%) of the budgeted gross expenses of the Mutual for that fiscal year, except upon the approval of at least a Majority of a Quorum of the Mutual. The

foregoing Member approval requirement shall not apply to the acquisition of a Lot by the Mutual via foreclosure.

2.10 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, installation, or acquisition of Capital Improvements upon the Common Area, provided that in any fiscal year expenditures for Capital Improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Mutual for that fiscal year, except upon the approval of at least a Majority of a Quorum of the Mutual.

2.11 Sale or Transfer of Mutual Property. Except as otherwise provided herein or by law, the Board of Directors shall not in any fiscal year sell, lease, or otherwise transfer property owned by the Mutual having a value in excess of five percent (5%) of the budgeted gross expenses of the Mutual for that fiscal year without the approval of at least a Majority of a Quorum of the Total Voting Power of the Mutual; provided, however, that the foregoing Member approval requirement shall not apply to the sale or transfer of any Lot which is owned by the Mutual as a result of the Mutual having acquired such Lot via foreclosure.

2.12 Easements to Owners. The Board shall have the power to grant and convey easements, licenses for use, and rights of way in, over, or under the Common Area or any portion thereof to Lot Owners for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Mutual, subject to the limitations set forth in the Governing Documents. Unless an exception as set forth in *Civil Code* section 4600 applies, the approval of a Majority of a Quorum shall be required before the Board may grant exclusive use of any portion of the Common Area to a particular Owner.

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

ARTICLE 3

OWNERSHIP RIGHTS AND EASEMENTS

3.1 Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Members of the Mutual and their families, tenants, and guests as provided in the Governing Documents, and there shall be no use of the Common Area except by such persons.

3.2 Owners' Non-Exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development for ingress, egress, and support

over and through the Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

(a) The right of the Board of Directors to establish and enforce reasonable Rules governing the use of the Common Area and facilities thereon;

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

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

(d) The right of the Board, as set forth in Section 3.12, to grant easements and rights of way in, on, over, or under the Common Area subject to the limitations set forth in Section 2.12 and *Civil Code* section 4600;

(e) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Mutual, subject to any Member approval requirements set forth in this Declaration or the Bylaws; and

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

3.3 Acquisition of Ownership Interest. Any person who acquires title to a Lot or any ownership interest within the Development must notify the Mutual of his or her acquisition of an ownership interest. Notice must be provided, in writing, to the Mutual's managing agent within thirty (30) days of the person's acquisition of an ownership interest.

3.4 Delegation of Rights of Use and Enjoyment. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, guests, and invitees, subject to the terms of the Governing Documents. Each Owner shall notify the Mutual's managing agent of the names of any tenants of such Owner's Lot. Each Owner and/or tenant shall also notify the Mutual's managing agent of the names of all members of his or her household to whom such Owner or tenant has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner or tenant. Any rights of

enjoyment delegated pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. Notwithstanding the above, a leasing or renting Owner shall be deemed to have delegated to tenants all rights of use and enjoyment of Common Area facilities. The renting and leasing of Lots shall be subject to the provisions of Article 5 of this Declaration.

3.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Mutual or its duly authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be recorded against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Mutual or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the subject Owner for all amounts paid by the Mutual, together with interest thereon at the legal rate and all costs and expenses incurred in connection with discharging a lien, including reasonable attorneys' fees.

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

In the event that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Lot and its Owner(s) are hereby declared to have an easement for retaining walls, footings, and all other encroachments as originally constructed over each adjoining Lot and/or Common Area for the maintenance thereof, together with an easement for the drainage of water from gutters and all other encroachments over each such adjoining Lot and/or Common Area.

3.8 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Mutual, together with the right to grant and transfer the same. The Mutual shall maintain all utility installations located in the Common Area except for: (i) those installations maintained by utility companies, public, private, or municipal; and (ii) utility installations for which Lot Owners are responsible, as provided in Section 6.3.1. The Mutual shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Lots.

3.9 Landscape Maintenance Areas. The Mutual shall have a non-exclusive easement over the Landscape Maintenance Areas for the purposes of maintaining, irrigating, repairing, and replacing the Landscape Maintenance Areas.

3.10 Mailboxes. Each Owner whose mailbox is located on a Lot other than that Owner's Lot shall have a non-exclusive easement for the use, maintenance, repair, and replacement of the mailbox over those portions of the Lot on which the mailbox is located.

3.11 Storm Drains. There are reserved and granted for the benefit of each Lot and the Common Area, over, under, across, and through the Project, except for portions of the Project on which a structure is situated, non-exclusive easements for surface and subsurface storm drains and the flow of storm waters in accordance with natural drainage patterns and the drainage patterns and improvements originally installed or constructed by the original developer.

3.12 Easements Granted by the Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television,

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power, telephone, and other purposes, public sewers, storm water drains and pipes, water systems, sprinkler and/or irrigation 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; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

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

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

3.15 Party Fences. The following provisions shall govern Party Fences:

3.15.1 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding Party Fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

3.15.2 Sharing of Maintenance, Repair, and Replacement. The cost of reasonable maintenance, repair, and/or replacement of a Party Fence shall be shared equally by the Owners of the Party Fence unless otherwise agreed to by such Owners in writing.

3.15.3 Destruction by Fire or Other Casualty. If a Party Fence is destroyed or damaged by fire or other casualty, any Owner who has used the fence may restore it, and if the other Owners thereafter make use of the fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

3.15.4 Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Section 3.15 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

3.15.5 Resolution of Disputes. If any dispute arises concerning a Party Fence, the Owners of the fence shall resolve the dispute amongst themselves in any manner permitted by law.

3.15.6 Modifications. No Owner shall alter the size, shape, or configuration, or use any materials different from those used in the initial construction of any Party Fence without obtaining the prior written approval of the Board, as required by Article 7 herein.

ARTICLE 4

USE RESTRICTIONS

4.1 Senior Citizen Residential Use. Except to the extent permitted by Sections 4.3 and 4.4, below, Lots shall be occupied and used for residential purposes only. Occupants, including guests, of each Lot shall be subject to age and other restrictions set forth in a written policy (i.e., the Senior Housing Rules) adopted by the Board in compliance with applicable federal and California law as those laws may be amended from time to time. It is the intention of this provision to restrict occupancy to older persons or senior citizens to the fullest extent permitted by applicable law.

4.2 Number of Occupants. The number of Residents per Lot shall not exceed two (2) individuals per one (1) bedroom Residence, three (3) individuals per two (2) bedroom Residence, and four (4) individuals per three (3) bedroom Residence, so long as said limitation is not in conflict with any governmental regulation or ordinance.

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

4.4 Restriction on Businesses. Lots shall be used for residential purposes only; no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other nonresidential purpose. Notwithstanding the foregoing, Owners or Residents of the Lot may use any portion of a Lot as an office, provided that: the primary use of the Lot is as a residence; no advertising or signage is used in any manner in connection with the office use; no customers, clients, or patients enter the Lot on any regular basis;

and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development.

4.5 Offensive Conduct, Nuisances, Noise. No harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable disturbance or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area or the use and enjoyment of their Lots. 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 Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area.

4.6 Use of the Common Area. All use of Common Area is subject to the Governing Documents, and no modifications of any type shall be made to the Common Area without the express written permission of the Board. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area. No portion of the Common Area shall be monopolized by any Owner, group of Owners, Residents, or tenants without the prior written approval of the Board of Directors.

4.7 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Mutual, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities, and all laws, ordinances, rules and regulations applicable to his or her Lot.

4.8 Requirement of Architectural Approval. As addressed in greater detail in Article 7, construction, installation, modification, or alteration of buildings, common systems (including plumbing and electrical systems), outdoor structures (including outbuildings, tents, shacks, trailers, sheds, or temporary buildings of any kind), landscaping, and outdoor lighting are subject to approval of the Architectural Committee and/or Board.

4.9 Prohibition on Smoking. In order to protect the health, safety and welfare of all Residents of the Development; to comply with Walnut Creek Ordinance No. 2118; and to protect against damage to the Development caused by fire, the smoking of cigarettes, e-cigarettes, cigars, any other tobacco or nicotine product, marijuana, and/or other legal or illegal substance in the Common Area,

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whether indoors or outdoors is strictly prohibited. "Smoking" shall include the inhaling, exhaling, burning or carrying of any lit cigarette, cigar, e-cigarette, any other tobacco or nicotine product, marijuana, and/or legal or illegal substance, and shall include smoke and vapor from any activity drifting from a Lot to the Common Area.

4.10 Sports Apparatus. No basketball standards (including portable basketball standards) or other sports apparatus (fixed or portable), including inflatable jump houses, shall be placed upon or attached to any portion of the Development without the written permission of the AC and/or Board. Portable or movable basketball equipment or other movable sports apparatus may not remain overnight on any Lot where visible from adjacent Lots or streets without the prior approval of the Board.

4.11 Outside Drying and Laundering. Clotheslines and drying racks as defined in *Civil Code* section 4750.10 are permitted as long as they comply with that section and the Mutual's Rules, and are installed in a backyard. Permanent structures designed to suspend a clothesline or serve as a drying rack are subject to prior architectural approval pursuant to Article 7. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any outside drying and laundering systems upon any portion of the Common Area. The Board may adopt Rules regarding the installation and maintenance of outside drying and laundering systems. No other outside clothes washing, drying, or airing facilities shall be maintained in the Development.

4.12 Satellite Dishes and Antennas. No outside radio, television, or telecommunications dish, antenna, wire, or other receiving or transmitting device shall be erected, constructed, or maintained on any Lot, except (i) those expressly approved by the Board or the Architectural Committee, or (ii) those that, by law, cannot be prohibited. It is the intention of this Section 4.12 to restrict outside radio, television, or telecommunications dishes, antennas, wires, and other receiving or transmitting devices in the Development to the fullest extent permitted by law. The Board may adopt Rules regarding the installation and maintenance of satellite dishes and antennas and related wiring for all telecommunications devices. Owners are strictly prohibited from installing satellite dishes, antennas, and/or other telecommunications receiving or transmitting devices in Common Area.

4.13 Animals and Pets.

4.13.1 Limitations on Animals and Pets. No animals shall be kept, bred, or maintained within the Development for commercial purposes. A maximum of three (3) common domestic household pets (i.e., dogs, cats, and birds in cages) may be kept on each Lot; only two (2) of which common domestic household pets may be dogs. A reasonable number of fish or small caged animals may also be kept on a Lot, subject to any Rules adopted by the Board. No other animals,

livestock, or poultry (including but not limited to chickens) of any kind shall be kept, bred, or raised on any Lot.

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

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

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

4.13.5 Service Animals and Assistance Animals. Service animals and assistance animals are not pets for purposes of Section 4.13; however, Owners shall be responsible for their service animals and assistance animals in accordance with the provisions of Section 4.13 and the Rules. Service animals and assistance animals are permitted on the Development in accordance with *Civil Code* section 54.2 and any other applicable law.

4.14 Landscape Maintenance Areas. No alterations may be made by an Owner within a Landscape Maintenance Area without first obtaining approval of the Board, which approval may be granted or withheld in the sole and absolute discretion of the Board. Unless otherwise determined by the Board, any Owner who adds landscaping in any Landscape Maintenance Area shall be responsible for maintaining and caring for the additional landscaping. The Mutual shall not be

responsible for any damage caused to any such added landscaping as long as the damage occurs in the ordinary course of the Mutual's regular landscape maintenance program.

4.15 Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in containers provided for that purpose by the garbage collection service in a number, location, and size as determined by the Board of Directors. Such containers shall be concealed from view, subject to Rules adopted by the Board, except the containers may be placed on Common Area or where visible on the night before and the day that trash pick-up is to occur. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept or accumulate upon any portion of the Common Area, except in such containers. Owners shall be responsible for any violations of this Section 4.15 and any applicable Rules adopted by the Board committed by their tenants, guests, and invitees. The Mutual shall have the right to remove any extraordinary accumulation of rubbish, trash, garbage, or debris to an offsite trash collection facility at the offending Owner's or Resident's expense.

4.16 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage of building materials unless approved by the Board or specifically authorized by the Rules. All construction debris shall be picked up and deposited daily in an appropriate container specifically designed for that purpose and provided by or on behalf of the Owner.

4.17 Machinery and Equipment; Vehicle Maintenance. Unless approved by the Board, no power machinery or equipment shall be permitted within the Development except as is customary and necessary in connection with approved construction and/or Residents' non-commercial use. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and any other relevant factors. No vehicle maintenance is permitted in the Development, with the exception of emergency work.

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

- (a) Signs required by legal proceedings;
- (b) Noncommercial signs or posters no larger than nine (9) square feet in size and noncommercial flags or banners no larger than fifteen (15) square feet in size, displayed upon an Owner's Lot, and limited to the fullest extent permitted by *Civil Code* section 4710;

(c) A single sign of customary and reasonable dimension and design complying with the Mutual or Architectural Rules and reasonably located on a Lot advertising a Lot for sale or rent;

(d) Other signs which by law cannot be prohibited;

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

(f) A single identification sign which has been approved by the Architectural Committee and/or Board located on a Lot identifying the number or address of the Lot and/or the names of the occupants;

(g) Signs approved by the Board located at or near any entrance to the Development identifying the Development;

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

(i) Signs on the Common Area as approved by the Architectural Committee and/or Board for a purpose reasonably related to the affairs of the Mutual.

4.19 Vehicles and Parking. Vehicles of Owners and Residents shall not be parked anywhere in the Development except wholly within the Owner or Resident's garage and/or driveway or in areas designated by the Mutual for the parking of passenger motor vehicles ("Designated Parking Areas"). All garages, driveways, and Designated Parking Areas shall be used solely for the parking of golf carts or motor vehicles used for personal transportation. Parking in driveways shall be limited to the Owner of the garage served by the driveway and that Owner's invitees and shall be subject to the Rules adopted by the Board (which may restrict or prohibit parking in some or all driveways) and applicable ordinances imposed by the City. Parking on the left side of the main road of Horseman's Canyon Road facing uphill is prohibited in order to allow buses and emergency vehicles to safely enter and exit the Development.

4.20 Prohibited Vehicles. No trailer, camper, mobile home, recreational vehicle (excepting golf carts), boat, or any commercial vehicle or truck other than a standard size pickup truck (i.e., one ton or less), shall be parked, kept, stored, or permitted to remain upon any area within the Development, other than wholly within a garage and temporarily in accordance with the Rules. All vehicles parked within the Development must have current registration and may not be dilapidated, inoperable, or abandoned. The term "commercial vehicle" shall not include any sedan or standard size pickup truck which is used for both business and personal

uses, provided that any signs or markings of a commercial nature on such a vehicle shall be unobtrusive and inoffensive as determined by the Board.

4.21 Parking Enforcement; Parking Rules. In addition to the provisions of Sections 4.19 and 4.20, above, the Board shall have the power and authority to adopt, promulgate, and enforce parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents. Costs incurred by the Mutual relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Lot Owner responsible or whose household members, tenants, or guests are responsible for the presence of such vehicle. Parking Rules adopted by the Board may include, but are not limited to, restrictions on the length of time that vehicles may be parked in the Common Area, procedures regarding the registration of vehicles, and the issuance of parking permits or tags.

4.22 Garages. Each Owner and Resident shall keep his or her garage in a sanitary and safe condition. Each garage door shall remain closed except as necessary to permit entry and exit of vehicles or to provide ventilation for individuals working in the garage area. Garages are to serve as the primary parking facility. No part of any garage shall be used for commercial purposes or converted to other use, such as sleeping quarters. In no event shall the garage area be used in a way that will preclude the parking of the number of vehicles for which the garage was designed.

4.23 Window Coverings. Drapes, window shades, and other window coverings installed in the windows of any Residence shall comply with any Rules adopted by the Board. Any drapes or other window covering installed in compliance with the Rules may remain for the useful life thereof. In no event shall aluminum foil, newspaper, cardboard, blankets, or similar materials be placed in windows. All window coverings shall be installed within ninety (90) days after the conveyance of the Lot, unless the Rules provide otherwise.

4.24 Exterior Lighting. No Owner shall remove, damage, or disable any exterior light, regardless of where located, which is connected to the Mutual's electric service.

4.25 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Development except when specifically authorized by the Board. Owners shall be responsible for the maintenance, repair, and replacement of any outbuilding located on his or her Lot.

4.26 Drainage. No Resident shall do any act or construct any improvement which would interfere with the natural or established drainage systems or patterns within the Development without the prior written approval of the Board.

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

4.28 Taxes. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor against that Owner's Lot and personal property.

ARTICLE 5

RENTING OR LEASING

5.1 Requirements for Renting. An Owner who wishes to rent his or her Lot and Residence shall:

(a) Complete an application for permission to rent as described in Section 5.57, below;

(b) Do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for an initial term of at least three (3) months and shall expressly provide that its terms are subject to all the provisions of the Governing Documents and 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 breach of the terms of such lease or rental agreement;

(c) File a copy of the signed lease or rental agreement with the Board within five (5) days after the lease becomes effective. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy of the lease or agreement provided to the Board;

(d) Comply with the requirements set forth in Section 10.7, below, namely, require the tenant to obtain and maintain a "renter's policy" (also known as a "HO-4" policy) and provide to the Board a certificate from the tenant's insurer certifying that the required insurance under Section 10.7 has been procured and is in full force and effect;

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

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

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

5.2 Rental of Entire Lot and Residence. No Owner shall rent or lease less than the entire Lot and Residence, except as stated in Sections 5.3 and 5.13, below. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Development. No garage, accessory building, or other facility shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the Lot. This Section is not intended to prohibit a resident Owner from sharing his or her Residence with a roommate or other person(s) with whom the Owner maintains a common household.

5.3 No Subletting or Short-Term Rentals; Roommates. No portion of any Lot or Residence shall be sublet nor shall any Owner lease a Lot or Residence for transient or hotel purposes. Owners are prohibited from offering all or part of any Lot or Residence for short-term rental for a period of less than three (3) months, through Airbnb, VRBO or other similar websites or entities, or by any other rental agreement which includes as consideration payment of money, trade or barter of other goods or services, or conveyance of property occupancy rights. However, a resident Owner may share his or her Lot or Residence with a roommate or other persons with whom the Owner maintains a common household and such persons may pay rent to the resident Owner. In such common household cases, the Lot shall not be considered a "rental" for the purposes of the restriction on the number of Lots that may be rented, as set forth in Section 5.5, below.

5.4 Time-Share Arrangements Prohibited. No Lot or Residence 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 Lot or Residence in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time. This Section shall not be construed to limit the personal use of any Lot or Residence in the Development by any Owner or his or her or its social or familial guests.

5.5 Restriction on Number of Lots Leased or Rented. Except as provided in Sections 5.5.1 and 5.5.2, below, not more than twenty-five percent (25%) (i.e., 16) of the Lots within the Development 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 forty-seven (47) of the Lots in the Development are Owner-occupied. For purposes of this Article, the following individuals shall be deemed Owner-occupants if the Lot is owned by an entity other than a natural person: (i) a Resident of a Lot who is a trustee or beneficiary under a trust if legal title to the Lot is in the name of the trustee(s) of the trust; (ii) a Resident of a Lot who is a shareholder with a majority shareholder interest in the corporation that owns the Lot; and (iii) for any other legal entity, any Resident who is a majority owner of the entity.

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

5.5.2 Hardship Waivers. Upon written request of an Owner, the Board shall have the right, but shall not be obligated, to waive the limitation on the number of permitted rentals or the order of priority of requests to rent in cases of deserving and unusual hardship (for instance, a family illness requiring temporary relocation for treatment) provided: (i) each such waiver shall be for a limited term, not to exceed one (1) year; (ii) the Owner in question shall deliver to the Board a signed statement representing that he or she will retake possession and occupancy of the Lot or Residence as a Resident thereof upon the expiration of such limited term; and (iii) such waiver shall be subject to other conditions as the Board may determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term. Owners may apply for consecutive hardship waivers, and the Board may approve consecutive hardship waivers as deemed appropriate.

5.6 List of Rented Lots and Residences. The Board shall maintain a list of all Owners currently leasing or renting a Lot and Residence, which list shall include: (i) the Owner's name and mailing address; (ii) the address of the rented Lot and Residence and the Owner's record date of ownership; and (iii) term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board.

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

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

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

5.7.3 Duration of Authorization to Rent. Subject to the provisions of this Section 5.7.3, once an Owner who is not grandfathered pursuant to Section 5.5.1 obtains permission to lease or rent a Lot and Residence, that Owner shall have the right to continue renting that Lot and Residence to consecutive lessees or renters for consecutive terms without having to re-submit a request for permission to rent; provided such lease or rental is otherwise in compliance with the provisions of this Article 5 and is without interruption of more than thirty (30)

days, or, in the case of approved remodeling of the Residence, ninety (90) days and provided further that during such interruption in rental the Owner shall not reoccupy the Residence for a period exceeding sixty (60) days.

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

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

5.9 Mutual as Third-Party Beneficiary. The Owner and the tenant(s) of any Lots subject to this Declaration shall be conclusively deemed to have agreed that the Mutual is an intended third-party beneficiary to the contract between the Owner and the tenant(s); that failure of the tenant, members of the tenant's household, or guests to comply with the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant(s); and that the Mutual shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under the Declaration, including but not limited to the rights granted pursuant to Section 5.10, below, or under the law, including eviction, to the same extent as the Owner of the Lot. The Mutual's right to maintain an eviction action shall arise only in the event that: (i) the Mutual has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments against eviction by the Mutual, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

5.10 Assignment of Rents as Security for Payment of Liens. As security for the payment of all liens provided for under the Declaration, including those described in Section 8.2, each Owner hereby gives to and confers upon the Mutual the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Mutual or in performance of any agreement thereunder, including but not limited to those set forth in Section 8.2, to collect and retain such rents, issues, and profits as they may become due and payable. Upon any such default, the Mutual may at any time, upon ten (10) days' written notice to such Owner, then (either in person, by agent,

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or by a receiver to be security for such indebtedness) enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Mutual may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration, including but not limited to imposition of a Reimbursement Assessment and any Additional Charges. The assignment of rents and powers described in this Section shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first Mortgage on any Lot, or any part thereof, to do the same or similar acts.

5.11 Owner Responsible for Tenant's Actions; Indemnification of Mutual. Each Owner leasing or renting a Lot shall be responsible and strictly liable to the Mutual for the action of such Owner's tenant(s) in or about all Lots 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 Lot that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Mutual, its Directors and agents and shall hold them harmless from and against any cost, loss, claim or damages of any kind, arising out of the conduct or presence of the occupants of the Lot, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Mutual of the Governing Documents with respect to such occupants. Any amounts owed pursuant to this Section may be assessed as a Reimbursement Assessment.

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

5.13 Owner-Owner Leases. Notwithstanding any other provision of the Governing Documents, leases for the use of garages between Owners or between an Owner and a resident of another Rossmoor mutual ("Owner-Owner Lease") are permissible; provided, however, the Owner-Owner Lease is in writing and signed by all parties. Owners may not rent their parking spaces of any type to another Owner if doing so will prevent them from parking their personal vehicles in their assigned parking spaces, i.e., an Owner may not rent his or her parking spaces to another Owner and then use Common Area or guest parking spaces for his or her personal vehicle(s). There may be an unlimited number of Owner-Owner Leases.

A copy of each such Owner-Owner Lease shall be provided to the Mutual within thirty (30) days of its execution.

ARTICLE 6

MAINTENANCE, REPAIR, AND REPLACEMENT RESPONSIBILITIES

6.1 Common Area. The Mutual shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon, including but not limited to: private streets, walkways, and sidewalks (but excluding driveways); the emergency storage shed; open space and all landscaping located thereon (including the maintenance of trees planted in Common Area and the roots of any such trees); and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies and sewer lateral lines located outside the boundaries of a separate interest and exclusively serving one Lot), keeping such property in good condition and repair.

6.2 Lots and Residences. Except as otherwise specifically provided in this Declaration, each Owner shall provide maintenance, repair, and replacement of the Owner's Lot, including the Residence and other improvements located thereon, in a manner consistent with the standards established by the Governing Documents and in compliance with the Architectural Rules:

6.2.1 Exterior Lighting. The Mutual shall maintain, repair, and replace all exterior light fixtures and bulbs connected to the Mutual's electric service.

6.2.2 Landscape Maintenance Areas. The Mutual shall maintain, repair, and replace all landscaping and other improvements within the Landscape Maintenance Areas. Some areas shall be left unimproved and in their natural state, at the sole discretion of the Board.

6.2.3 Landscaping. Each Owner shall maintain, repair, and replace all landscaping located within the Owner's Lot, excluding any landscaping located within the Landscape Maintenance Area.

6.2.4 Walkways. Each Owner shall be responsible for the maintenance, repair, and replacement of all walkways located on his or her Lot and/or exclusively serving his or her Lot, except for sidewalks, which are the maintenance, repair, and replacement responsibility of the Mutual.

6.2.5 Driveways. Each Owner shall be responsible for the maintenance, repair, and replacement of the driveway located on his or her Lot and/or exclusively serving his or her Lot, regardless of location of the driveway.

6.2.6 Storm Drains. Each Owner shall maintain, repair, and replace all portions of the storm drainage system situated on the Owner's Lot and which serve only that Owner's Lot. All other portions of the storm drainage within the Development shall be maintained, repaired, and replaced by the Mutual unless otherwise maintained by the City or other governmental or quasi-governmental agency or entity.

6.2.7 Water Lines. Each Owner shall maintain, repair, and replace all domestic water lines which connect the Owner's meter to the Owner's Residence.

6.3 Other Components.

6.3.1 Utility Lines Serving Lot. Each Owner shall be responsible for the maintenance, repair, and replacement of sewer, water, electrical and other utility lines and fixtures located on his or her Lot. Additionally, each Owner shall be responsible for the maintenance, repair, and replacement of the lateral sewer line that exclusively serves his or her Lot, even if located outside of the Lot. If the repair to any utility lines or fixtures impacts or affects Common Area, the Owner must obtain the written approval of the Board before proceeding with repairs. The provisions of this Section shall not be construed to permit any interference with or damage to the structural integrity of any building.

6.3.2 Party Fences. The shared responsibilities of Owners for maintenance, repair, and/or replacement of Party Walls and Party Fences shall be as set forth in Section 3.15, above.

6.3.3 Other Fences. Each fence which separates a Lot from Common Area shall be maintained, repaired, and replaced by the Owner of the Lot. Maintenance shall include refinishing the exterior surface of the fence if that surface was previously finished with paint or stain.

6.3.4 Mailboxes. Each Owner shall maintain, repair, and replace the mailbox, including the post and structure supporting the mailbox, which serves their Residence, wherever located.

6.4 Authority for Entry on Landscape Maintenance Area. The Mutual or its agents may enter any Landscape Maintenance Area whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Mutual is responsible or which it is authorized to perform.

6.5 Owner Modifications. In the event an Owner or Resident has modified or added on to a Residence or to a component that would otherwise be the responsibility of the Mutual and which increases the maintenance, repair and/or

replacement cost to the Mutual, the Owner shall reimburse the Mutual for the increased cost, which may be levied as a Reimbursement Assessment. The Mutual may condition approval of a modification on an Owner assuming responsibility for increased maintenance costs associated with the modification. However, the Owner and his or her successors shall be responsible for payment of increased costs even in the absence of an express assumption of responsibility.

6.6 Limitation on Mutual Responsibility and Liability. Except as specifically provided in this Article 6, the Mutual shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any improvement therein, 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.

6.7 Repair of Damage Caused by Wood-Destroying Pests or Organisms and Other Pests. The Mutual shall bear the costs for the repair and maintenance of Common Area damaged by the presence of wood-destroying pests or organisms or other pests. Each Lot Owner is responsible for costs of repair and maintenance of any improvements on the Lot, including the Residence, damaged by the presence of wood-destroying pests or organisms or other pests. Such responsibility shall include the responsibility for periodic maintenance to prevent the occurrence or re-occurrence of wood-destroying pests or organisms or other pests.

6.8 Compliance with Architectural Rules. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 7.

6.9 Board Discretion. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to correct a safety hazard for the neighbor(s) adjacent to an Owner's Lot or to preserve the appearance and value of the property within the Development 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 opportunity of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment. In the case of an emergency, or if the Owner's failure to perform work presents a safety hazard, the Board may cause such work to be done immediately, without notice to the Owner, and charge the cost thereof to the Owner as a Reimbursement Assessment.

6.10 Owner Liability. In the event the need for any maintenance, repair, or replacement of a component which is otherwise the Mutual's responsibility is

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

ARTICLE 7

ARCHITECTURAL REVIEW

7.1 Improvements and Modifications. Except for improvements made or constructed by or on behalf of the Mutual, no exterior addition or modification of any kind, including but not limited to any fence, wall, obstruction, window, exterior door, balcony, screen, patio cover, tent, awning, roof, pool, outdoor lighting, improvement, or other structure of any kind, and/or landscaping, shall be commenced, erected, painted, or maintained within the Development, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Architectural Committee, Landscaping Committee, and/or Board as provided in this Article 7.

7.1.1 Satellite Dishes and Antennas. No mast, pole, tower, antenna, receiver, transmitter or satellite dish may be commenced, erected, or installed without the prior written approval of the Architectural Review Committee and/or Board as provided in this Article 7.

7.1.2 Landscaping. No installation or modification of landscaping anywhere in the Development is permitted without the prior written approval of the Landscaping Committee and/or Board as provided in this Article 7 and the Rules.

7.2 Establishment of Architectural Committee.

7.2.1 Members. The AC, if any, shall be composed of at least one (1) Member in Good Standing appointed by the Board of Directors. The Board may also appoint one alternate member who may be designated by the AC to act as a member of the AC in the absence or incapacity of any AC member. AC members shall serve one-year terms subject to the Board's power to remove any

AC member and to appoint his or her successor. Neither the members of the AC nor its designated representatives shall be entitled to any compensation for service performed pursuant hereto.

7.2.2 Board May Serve as Architectural Committee. If at any time there is not a duly constituted Architectural Committee, the Board shall exercise the functions of the AC in accordance with the terms of this Article 7.

7.2.3 Vacancies. In the event of a vacancy on the AC, the Board shall have the full authority to appoint a new member.

7.2.4 Duties. It shall be the duty of the Architectural Committee, if any, to consider and act upon proposals or plans submitted to it pursuant to the terms of this Article 7, to perform other duties delegated to it by the Board, to carry out all other duties imposed upon it by this Declaration, and to act in accordance with *Civil Code* section 4765. The AC, if any, shall serve at the pleasure of the Board.

7.2.5 Meetings, Minutes, Reimbursement. The AC, if any, shall meet as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members of the AC shall constitute an act by the AC. The AC shall keep and maintain a record of all actions/recommendations taken by or made by it at such meetings or otherwise. The AC and its members shall be entitled only to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any AC function.

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

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

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

(c) The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed improvement under the Governing Documents. All variances shall be reviewed on a case-by-case basis with no precedent being

established if a variance is granted in a particular instance and must be approved by a majority of the affirmative votes of the AC and Board;

(d) Lists of repair projects and minor improvement projects that can receive final review and approval by the Architectural Committee, if any, without review/approval by the Board, so long as the project is undertaken in accordance with plans and specifications that are consistent with the Architectural Rules, or the project involves use of an identical color or external material to the existing color or material, and the new materials/colors are submitted to and reviewed by the AC, if any;

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

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

7.5 Fees; Consultants. The AC and/or Board may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants, including but not limited to architects, engineers, soils experts, or contractors. The costs of any such outside consultants may be levied against an Owner and his or her Lot as a Reimbursement Assessment. However, before a consultant is retained by the AC and/or Board, the Owner will be informed in writing of the AC and/or Board's intention to retain a consultant at the Owner's expense, and the Owner will be given the opportunity to decide to pay the consultant's fee or decide not to pursue the improvement or modification. An Owner who withdraws his or her application shall do so without penalty, including fees.

7.6 Decisions on Architectural Applications. The Owner and, in the Board's discretion, other interested persons, may present information relevant to the requested approval. The decisions of the AC and/or Board shall be made in good faith and shall not be unreasonable, arbitrary or capricious. The AC and/or Board may employ subjective criteria and judgments in their review of and determination regarding plans and proposals submitted to them. The decisions of the AC and/or Board shall be made from the perspective of the interest of the Development as a whole, including the coherence, value, attractiveness, and aesthetic compatibility of all architectural designs and features in the Development, after consideration of all factors the Board determines to be relevant and after

reasonable investigation consistent with the scope and circumstances of the proposal.

7.7 Grant of Approval. The Architectural Committee or, if there is no Committee, the Board shall grant the requested approval only if all the following conditions are met:

(a) The Owner complied with the provisions of Section 7.4, above.

(b) The AC and/or Board find(s) 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 AC and/or Board.

(c) The AC and/or Board determine(s) that the proposed improvements would be consistent with the standards and aesthetics of the Development and the purposes of this Declaration as to: quality of workmanship, design and materials; harmony of exterior design with the existing improvements; structures; and location with respect to topography and finished grade elevations.

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

7.9 Appeals; Reconsideration by the Board. If an application is denied by the AC, the Owner-applicant is entitled to reconsideration of the decision by the Board at an open Board meeting. The Architectural Rules shall contain procedures to process appeals pursuant to this Article 7; however, denial decisions rendered by the Board may not be appealed. AC decisions may also be modified or overturned by the Board on its own initiative.

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7.10 Commencement. Within ninety (90) days of receipt of approval pursuant to Sections 7.6 and 7.7, above, the Owner shall satisfy all conditions thereof and diligently proceed with the commencement and completion of all work pursuant to said approval. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

7.11 Completion. Unless shorter time is specified in the approval by the Mutual, the Owner shall complete the approved work within six (6) months after receipt of approval, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the Board shall proceed in accordance with the provisions of Section 7.12, below, as though the failure to complete the improvements was a non-compliance with approved plans.

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

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

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

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

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

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

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

7.13 Non-Waiver. The approval by the AC and/or Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the AC and/or Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

7.14 Liability. Neither the AC and/or the Board (or any member thereof) shall be liable to the Mutual or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development of any property within the Development; provided, however, that the AC and/or Board (or any member thereof) has acted in good faith on the basis of such information as may be possessed by it (or such AC, if any, and/or the Board member). Without in any way limiting the generality of the foregoing, the AC, if any, and/or Board and/or AC (or any member thereof) may, but is not required to, consult with or hear the views of the Mutual or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the AC and/or the Board. Every purchaser, by acquiring title to a Lot, agrees not to bring any action or suit against the AC, if any and/or Board (or any member thereof) seeking to recover any such damages.

7.15 Compliance with Governmental Requirements. The application to the Mutual and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the AC and/or the Board (or any member thereof) as to the accuracy, efficacy, or sufficiency thereof. The obtaining of a permit or other approval of a government agency shall not be a substitute for nor constitute compliance with the requirements of this Article 7.

ARTICLE 8

ASSESSMENTS AND LIENS

8.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Mutual: (i) Annual Assessment; (ii) Special Assessments; and (iii) Reimbursement 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 Each Assessment Is a Separate Obligation. Each Assessment levied by the Mutual under this Article 8, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.

8.1.3 Obligation Runs with the Land. Such obligation to pay Assessments and Additional Charges and the right and power of the Mutual to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Lot within the Development shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is record Owner of such Lot.

8.1.4 Owner's Liability after Transfer. After an Owner transfers fee title to any Lot, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Lot shall

continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Contra Costa County.

8.2 Creation of Lien. Each Assessment levied by the Mutual pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Mutual shall have a separate lien, and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

8.2.1 Continuing Lien. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Mutual's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law.

8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, to conduct the business and affairs of the Mutual, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development.

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

8.5 Mutual Funds. Unless otherwise determined by the Board, the Mutual shall maintain at least two (2) separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated WALNUT CREEK MUTUAL NO. SIXTY-ONE OPERATING ACCOUNT and WALNUT CREEK MUTUAL NO. SIXTY-ONE RESERVE ACCOUNT. The Assessments collected by the Mutual shall be properly deposited into such accounts. The Assessments collected by the Mutual shall be held in trust by the Mutual for and on behalf of each Owner and shall be used for the purposes set forth in Section 8.3. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Development and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the improvements within the Development for which the Mutual is responsible, as specified in the annual budget. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the

funds held in trust by the Mutual shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

8.6 Annual Assessment.

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

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

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

8.6.4 Increases in Annual Assessment. Pursuant to *Civil Code* section 5605(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members (i.e., Members representing at least thirty-two (32) Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

8.7 Special Assessments.

8.7.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including

nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Development, or if funds are otherwise required for any authorized activity of the Mutual, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

8.7.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as the Annual Assessment (i.e., equally among the Lots by dividing the total amount of the Special Assessment by the number of Lots within the Development). The Board, in its sole discretion, may allow Owners' portions of a Special Assessment to be paid in installments.

8.7.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Mutual for that fiscal year, except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members (i.e., Members representing at least thirty-two (32) Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

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

8.9 Reimbursement Assessments. The Mutual shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or animal for which the Owner is responsible to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Mutual, specifically including attorneys' fees. A Reimbursement Assessment shall include any costs and interest, including attorneys' fees incurred by the Mutual and costs of collecting from an Owner any amount which the Owner is obligated to pay to the Mutual. Imposition of a Reimbursement Assessment shall be effective only after a duly noticed hearing before the Board. A Reimbursement Assessment shall be due and payable to the Mutual when levied and subject to the same enforcement procedures as Annual and Special Assessments, including lien and foreclosure.

8.10 Foundation Assessments. So long as agreeable to the Mutual and the Foundation, the Mutual may provide Owners with a single periodic statement directing the Owners to pay to the Mutual the regular assessment levied by both the Mutual and the Foundation, and the Mutual shall then pay to the Foundation each billing period all assessments levied by the Foundation.

8.11 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

8.12 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Mutual has failed to properly exercise its duties of maintenance or enforcement.

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

8.14 Power of Sale. Each Owner does hereby appoint the Mutual as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale as provided by law, and does further grant to the Board of Directors, on behalf of the Mutual, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, 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 Lot at said sale.

The decision to record a lien and initiate foreclosure may only be made by the Board and may not be delegated.

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

8.16 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

8.17 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 8 shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage or first deed of trust recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage or deed of trust, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

8.18 Property Exempt from Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

(a) All property dedicated to and accepted by Contra Costa County or other local public authority and devoted to public use;

(b) Any Lot which is owned by the Mutual as a result of the Mutual having acquired such Lot through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Mutual is record Owner of such Lot; and

(c) All Common Area.

ARTICLE 9

ENFORCEMENT

9.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Mutual; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or be in the best interests of the Mutual and its Members as a whole. Notwithstanding the preceding sentence and without limiting its generality, nothing in the Governing Documents shall be deemed to impose upon the Mutual, the Board, or the officers, employees, or agents of the Mutual a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials; the Mutual, the Board, officers, employees or agents of the Mutual do not have police powers.

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

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

9.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.

9.5 Rights and Remedies of the Mutual.

9.5.1 Rights and Remedies Are Cumulative. The Mutual, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in

equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

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

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

9.6 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment, a remedy at law to recover damages for the breach or violation of the Governing Documents is inadequate, and the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Mutual or by any Owner, or by their respective successors in interest.

9.7 Limitation on Disciplinary Rights. The Mutual shall not have the power to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments. The provisions of this Section shall not affect the Mutual's right to impose fines or

monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

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

9.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter.

9.10 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development; (ii) a traffic or fire hazard; (iii) a threat of material damage to or destruction of the Development or any portion thereof; and (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). Notwithstanding any other provision of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Mutual acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request for a hearing shall be delivered to the Mutual no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

9.11 Notices. Any notices required or given under this Article 9 shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or

provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Mutual.

9.12 Dispute Resolution.

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

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

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

9.14 Costs and Attorneys' Fees. In the event the Mutual shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, member of his or her household, tenants, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Mutual shall be entitled to recover the full amount of all costs including attorneys' fees and experts' fees incurred by the Mutual in responding to such a violation and/or in enforcing any Governing Document provision. In the event of a court awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith. The remedies of the Mutual to recover the amount of such costs and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in Article 8.9 of this Declaration.

ARTICLE 10

INSURANCE

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

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

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

10.1.3 Crime Insurance. A blanket Commercial Crime Insurance Policy covering the Mutual, any organization or person who either handles or administers or is responsible for Mutual funds, whether or not any person receives compensation for services. The policy amounts shall satisfy the Federal National Mortgage Association ("FNMA") and Federal Housing Administration ("FHA") requirements and in no event shall be less than the sum of three months of Annual and Special assessments on all Memberships subject to Assessments.

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

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

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

(b) Landscaping. Lawn, trees, shrubs and plants located in the Common Area and the Landscaping Maintenance Areas.

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

10.2.3 Dollar Limit. The dollar limit of the Mutual's policy shall not be less than the full insurable replacement value of the covered property described in Section 10.2.1, based on insurance industry standards for determination of replacement values, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

10.2.4 Primary. The Mutual's policy shall be primary and noncontributing with any other insurance policy covering the same loss provided, however, that where a Member's individual insurance policy (discussed in Section 10.6) provides overlapping coverage, the Member's individual insurance policy shall be the primary coverage and the Mutual's policy shall be excess/supplemental/secondary coverage as the case may be.

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

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

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

The Mutual may enter into a deductible sharing agreement with other Rossmoor mutuals. In this event, to the extent there is any conflict between the payment of deductibles as set forth in this Section 10.2.7 and the agreement, the agreement shall control.

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

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

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

the requirement as described herein. The Board shall have the power and right to deviate from the insurance requirements contained in this Article 10 in any manner that the Board, in its discretion, considers to be in the best interests of the Mutual, provided that the Board shall maintain the minimum insurance requirements set forth in *Civil Code* sections 5800 and 5805 and as required in Section 10.3. If the Board elects to materially reduce the coverage from the coverage required in this Article 10, the Board shall, as soon as reasonably practicable, notify the Members of the reduction in coverage in the manner prescribed by law.

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

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

10.6 Members' Individual Insurance Requirements. Each Owner, at that Owner's sole cost and expense, shall obtain and maintain a "special causes of loss" policy in an amount equal to or greater than the total replacement value of the insurable improvements on the Lot, the Residence interior, and personal property contained therein (commonly known as a "HO-3" policy). The policy shall also provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance coverage of the types required herein. However, no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Mutual, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time. The Board may require any Owner, and may periodically require all Owners, to provide a certificate from the Owner's insurer certifying that the required insurance under this Section 10.6 has been procured and is in full force and effect.

The Mutual's insurance policies will not provide coverage for: (i) losses to the Member's personal property; (ii) liability from accidents or occurrences within the Member's Lot; or (iii) liability from accidents or occurrences within Rossmoor for which the Member may be held responsible and which may not be covered under the Mutual's Commercial General Liability policy. Each Member should seek the advice of a qualified insurance consultant regarding the Member's property and liability insurance obligations under this Section 10.6 and other applicable coverage available to Members.

Nothing herein imposes any duty on the Mutual, its directors, officers or agents (including the Mutual's managing agent) to confirm or otherwise verify that the Members are carrying the insurance required in this Section 10.6.

No Member shall separately insure any property covered by the Mutual's property insurance policy described in Section 10.2 unless the Member's individual insurance policy permits the application of any overlapping coverage under Member's policy as primary without a reduction in benefits from the coverage under the Mutual's policy. If any Member violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Mutual, the Member will be liable to the Mutual to the extent of the diminution. The Mutual may, subject to the Mutual's compliance with the notice and hearing requirements set forth in the Bylaws, levy a Reimbursement Assessment, as provided in Section 8.9, against the Member and said Member's Membership to collect the amount of the diminution.

10.7 Insurance by Tenant. Each Owner who rents or leases out his or her Lot shall (i) require the tenant to obtain and maintain a "renter's policy" (also known as a "HO-4" policy and (ii) provide to the Board a certificate from the tenant's insurer certifying that the required insurance under this Section 10.7 has been procured and is in full force and effect; provided, however, that neither the Mutual nor the Board shall be responsible for procuring insurance on a tenant's behalf or verifying that tenants are maintaining the required insurance to cover such tenant's property and provide liability coverage.

ARTICLE 11

DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION

11.1 Replacement or Repair of Mutual Property. In the event of damage to or destruction of Common Area or other property of the Mutual or any part thereof, the Mutual shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Mutual may levy a Special Assessment against the Members of this Mutual as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. The Members may elect not to cause such replacement or repair by the vote or written consent of two-thirds (2/3) of the Total Voting Power of the Mutual. If there is an election not to rebuild or repair, the applicable insurance proceeds shall be distributed by the Mutual to the Members pro rata or otherwise made use of as determined by the vote of the Members.

11.2 Rebuilding or Repair of Improvements on Lots. If any Lot and/or Residence is damaged or destroyed by fire or other casualty, the Owner(s) of any

such Lot shall repair or rebuild the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Architectural Committee and/or Board. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction, except upon approval of the Board. The Mutual shall make available to the Owner(s) of the damaged Lot the proceeds from insurance applicable to the loss, if any, to repair or rebuild the Lot. However, the amount of such proceeds shall not limit the obligation of the Owner(s) to repair or rebuild.

11.3 Condemnation.

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

11.3.2 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Mutual shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a residence, the Owner shall continue to be a Member of the Mutual. In any condemnation action involving an Owner's Residence or Lot, the Mutual shall have the right to seek compensation for any damages incurred by the Mutual.

ARTICLE 12

AMENDMENT

This Declaration may be amended by the affirmative vote of Members representing at least a Majority of a Quorum of the Members. For purposes of the preceding sentence, the quorum requirement shall be a majority (more than fifty percent (50%)) of the Total Voting Power, as set forth in Section 4.6.3 of the Bylaws. Any amendment of the Declaration shall be signed and acknowledged by

the duly authorized officer(s) of the Mutual and recorded in the Office of the Contra Costa County Recorder.

ARTICLE 13

GENERAL PROVISIONS

13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration or otherwise.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

13.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

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

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

13.6 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

13.7 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

13.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Area, and shall inure to the benefit of and be binding upon the Owners, the Mutual, its Board of Directors and officers, and their


respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter, the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial thirty (30) year term or any ten (10) year extension period, a written instrument approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Mutual, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Contra Costa County, California.

IN WITNESS WHEREOF, we, the Members of Walnut Creek Mutual No. Sixty-One, constituting at least the requisite number of Members of said Mutual, hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Sixty-One, in accordance with Section 11.1 of the 1998 Declaration and Paragraph 13B of the Establishing Declaration, by means of the signatures of the President and Secretary of the Mutual, duly authorized by the affirmative vote of the requisite number of Members of the Mutual; therefore the Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Contra Costa County, California.

DATED: Aug 21, 2019

WALNUT CREEK MUTUAL NO. SIXTY-ONE


Richard Bertrand, President


Rebecca Kunzman, Secretary

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On Aug 21-19, before me, Karen Kruth, Notary Public
Notary Public, personally appeared, Richard Bertrand, 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 Karen Kruth (Seal)



ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF Contra Costa

On Aug 21-19 before me, Karen Kruth, Notary Public
Notary Public, personally appeared, Rebecca Kunzman, 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 Karen Kruth (Seal)

