

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

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

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**SECOND AMENDMENT TO AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
FOURTH WALNUT CREEK MUTUAL**

This Second Amendment to the Amended Declaration of Covenants, Conditions and Restrictions of Fourth Walnut Creek Mutual (the "Second Amendment") is made on the date hereinafter set forth by FOURTH WALNUT CREEK MUTUAL, a California nonprofit mutual benefit corporation (the "Mutual").

RECITALS

A. WHEREAS, an instrument entitled "Amended Declaration of Covenants, Conditions and Restrictions of Fourth Walnut Creek Mutual" was recorded on February 14, 2003 as Document No. 2003-72096 in the Official Records of Contra Costa County, California (as amended by the First Amendment described in Recital B. below and collectively, the "Declaration").

B. WHEREAS, a First Amendment to the Declaration was recorded on November 25, 2009 as Document No. 2009-0279590 in the Official Records of Contra Costa County, State of California ("First Amendment").

C. WHEREAS, the Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in those certain parcels of real property located in the City of Walnut Creek, Contra Costa County, State of California and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

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

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

F. WHEREAS, pursuant to Article 11.1 of the Declaration, the Declaration may be amended with the approval of Members representing at least an Absolute Majority of the Members, that is, a majority of the Total Voting Power of the Mutual.

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

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

1. Section 7.1 of the Declaration (entitled "Damage to a Unit or Units") shall be deleted in its entirety and the following inserted in its place:

7.1 Damage to a Unit or Units. As set forth in Section 13.6 of this Declaration, each Unit Owner is responsible for insuring the contents of his or her Unit. Regardless of the insurance carried by the Unit Owner, damage to or destruction of the contents of the Unit from a property or casualty loss shall be the complete and total responsibility of the Unit Owner. If damage occurs to property within the Unit that is insured by the Mutual pursuant to Section 13.2.1(ii) of this Declaration, the insurance proceeds shall be paid to the Mutual, and the Mutual shall use same to rebuild or repair such property. In the event the insurance proceeds and available Mutual funds are insufficient to cover the complete cost of repair of such property, the Board shall levy a Special Assessment against all Owners in the amount necessary to complete the repairs to the damaged property.

2. New ARTICLE 13 (entitled "INSURANCE") shall be added to the Declaration as follows:

13.1 **Liability and Fidelity Insurance.** The Mutual shall obtain and maintain the following liability policies:

13.1.1 **Commercial General Liability Policy:** A Commercial General Liability policy insuring the Mutual, any manager, the Mutual's directors and officers, and the Owners against liability arising from any bodily injury or property damage as a result of an accident or occurrence within the Common Area. Subject to the terms and conditions of the policy, the policy also shall cover bodily injury or property damage from an accident or occurrence within any Unit related to any maintenance or repair work required to be performed by the Mutual pursuant to the Declaration and/or the Mutual's Maintenance Policies, 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 1365.9 or any successor statute thereto covering all claims for bodily injury and property damage arising out of a single occurrence. The coverage may be a combination of primary and excess policies. The insurance shall be provided with coverage terms provided by Insurance Services Offices (ISO) form CG 0001, or equivalent or better coverage. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability

or risk customarily covered with respect to projects similar in construction, location and use. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

13.1.2 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 1365.7 or any successor statute thereto.

13.1.3 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 Units subject to Assessments.

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

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

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

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

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

13.2.2 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.

13.2.3 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 13.2.1 above based on insurance industry standards for determination of replacement values, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

13.2.4 Primary. The Mutual's policy shall be primary and noncontributing with any other insurance policy covering the same loss provided, however, that where an Owner's individual insurance policy (discussed in Section 13.6 below) provides overlapping coverage, the Owner'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.

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

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

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

The Mutual may enter into a deductible sharing agreement with other Rossmoor mutuals. In this event, to the extent there is any conflict between the payment of deductibles as set forth in this Section 13.2.7 and the agreement, the agreement shall control.

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

13.4 Insurance Rating and Cancellation. The insurance company providing the Mutual's insurance under Sections 13.1 and 13.2 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.

13.5 Board's Insurance Authority. The Board has the authority on behalf of the Mutual and each of its Owners to participate with the Golden Rain Foundation of Walnut Creek or any successor or assign thereto (the "Foundation") 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 13.1 and 13.2 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 13 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 1365.7 and 1365.9 or in any successor statute thereto and as required in Section 13.3. If the Board elects to materially reduce the coverage from the coverage required in this Article 13, the Board shall, as soon as reasonably practicable, notify the Members, in writing, of the reduction in coverage.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Mutual, including, but not limited to, the right and

authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

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

13.6 Owners' Individual Insurance Requirements. Each Owner shall procure and maintain property insurance against losses to personal property located within the Owner's Unit and personal liability coverage. The Mutual's insurance policies will not provide coverage for: (i) losses to the Owner's personal property; (ii) losses to any Alterations to the extent not covered under Section 13.2.1(ii); (iii) liability from accidents or occurrences within the Owner's Unit or portions of the Common Area set aside for the exclusive use or possession of the residents of the Unit (that is, Exclusive Use Common Area); or (iv) liability from accidents or occurrences within Rossmoor for which the Owner may be held responsible and which may not be covered under the Mutual's Commercial General Liability policy. Each Owner should seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this Section 13.6 and other applicable coverage available to Owners of Units.

Nothing herein imposes any duty on the Mutual, its directors, officers or agents (including the Mutual's managing agent) to confirm or otherwise verify that the Owners are carrying the insurance required in this Section 13.6.

No Owner shall separately insure any property covered by the Mutual's property insurance policy described in Section 13.2 above unless the Owner's individual insurance policy permits the application of any overlapping coverage under Owner's policy as primary without a reduction in benefits from the coverage under the Mutual's policy. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Mutual, the Owner will be liable to the Mutual to the extent of the diminution. The Mutual may, subject to Mutual's compliance with the notice and hearing requirements set forth in the Governing Documents, levy a Reimbursement Assessment against the Owner and the Owner's Unit to collect the amount of the diminution.

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

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

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IN WITNESS WHEREOF, the undersigned duly authorized officers of FOURTH WALNUT CREEK MUTUAL hereby certify that this First Amendment has been approved, in accordance with Section 11.1 of the Declaration, by Members representing at least an Absolute Majority of the Members, that is, a majority of the Total Voting Power of the Mutual.

Dated: June 6, 2013

Dated: June 6, 2013

FOURTH WALNUT CREEK MUTUAL

By: Donald M. Cardinal
Donald Cardinal, President

By: Penny Wade
Penny Wade, Secretary