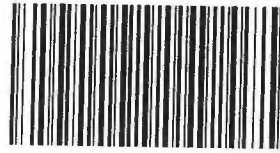


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Taxes
Other
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AND
WHEN RECORDED MAIL TO:**
HACIENDA CARMEL COMMUNITY
ASSOCIATION
c/o Berding & Weil
3240 Stone Valley Road West
Alamo, CA 94507

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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AMENDED AND RESTATED DECLARATION OF COVENANTS,
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EXHIBIT B83
EXHIBIT C89

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
HACIENDA CARMEL COMMUNITY ASSOCIATION**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date set forth at the end of this document by HACIENDA CARMEL COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation (referred to in this document as the "Association").

PREAMBLE

Hacienda Carmel is a senior housing development consisting of 300 condominiums and is located east of Highway 1 off Carmel Valley Road and adjacent to the Carmel River.

Hacienda Carmel Community Association is responsible, among other things, for maintenance and upkeep of common area and for ensuring that the community complies with applicable federal and state laws concerning the qualification of all residents, occupants, and guests to reside in a senior housing development, including but not limited to age requirements.

Hacienda Carmel is not a community licensed as a "continuing care retirement community," a "residential care facility for the elderly," or otherwise equipped to accept responsibility for or to care for persons who are not capable of safely living independently. The Association does not provide care or supervision of residents, assistance with activities of daily life, assisted living services, or care programs of any kind for residents.

RECITALS OF BACKGROUND FACTS; DECLARATIONS

- A. The Association is the successor in interest to Alcan Pacific Co., a corporation, which, as Declarant, executed that certain Hacienda Carmel Declaration of Protective Restrictions, dated June 29, 1962, and recorded on July 16, 1962, in Reel 74, Pages Images 492 through 523, inclusive, Instrument/Series No. 98008[?], Official Records of Monterey County, State of California (referred to in this document as the "1962 Declaration").

- B. Amendments and other instruments modifying the 1962 Declaration were recorded on various dates as set forth in Exhibit A which instruments collectively are referred to in this document as the "Original Declaration".
- C. The Original Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with, and are binding upon all parties having or acquiring any right, title, or interest in, that certain real property located in the County of Monterey, State of California, and more particularly described as set forth in Exhibit B.
- D. The Project (as defined herein) is a "senior citizen housing development" as defined in California Civil Code section 51.3(b)(3) and is operated as "Housing for Older Persons" as defined in the United States Fair Housing Amendments Act of 1988, 42 U.S.C.S. section 3607(b)(2).
- E. THE MEMBERS, constituting at least two-thirds (2/3) of the Members of the Association, desire to amend, modify, and otherwise change the Original Declaration pursuant to Article VII, Section 2 thereof, and DO HEREBY DECLARE that the Original Declaration shall be, and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of Hacienda Carmel Community Association.
- F. IT IS HEREBY DECLARED that all of the real property described in Exhibit B constitutes a condominium project within the meaning of section 1351(f) of the California *Civil Code*.
- G. IT IS FURTHER HEREBY DECLARED that all of the real property described in Exhibit B is and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions set forth herein, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.
- H. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions set forth herein shall constitute enforceable equitable servitudes as provided in *Civil Code* section 1354, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or the owner or holder of any interest or estate therein and their heirs, successors, and assigns.

ARTICLE 1 DEFINITIONS

- 1.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures including, but not limited to, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments.
- 1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 8.7.
- 1.3 Articles. "Articles" shall mean the Amended Articles of Incorporation of Hacienda Carmel Community Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.4 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.5 Association. "Association" shall mean Hacienda Carmel Community Association, a California nonprofit mutual benefit corporation, its successors and assigns.
- 1.6 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.7 Buildings and Grounds Committee. "Buildings and Grounds Committee" shall mean the Committee, if any, appointed pursuant to Article 7 ("Architectural Approval").
- 1.8 Bylaws. "Bylaws" shall mean the Amended Bylaws of the Association as they shall be duly adopted by the Board of Directors and the Members and any duly-adopted amendments thereof.
- 1.9 Civil Code. "*Civil Code*" shall mean the California *Civil Code* as amended from time to time.
- 1.10 Common Area. "Common Area" shall mean (i) all of the property comprising the Project that is owned by all of the Owners in common but excluding the Units and (ii) all real property (including easements) owned or held by the Association from time to time for the common use and enjoyment of the Owners and Residents of the Project. Some portions of the Common Area constitute "Exclusive Use Common Area" as defined in Section 1.18 ("Exclusive Use Common Area").

- 1.11 Condominium. "Condominium" shall mean an estate in real property as defined in *Civil Code* sections 783 and 1351(f), consisting of an undivided interest in all or any portion of the Common Area together with a separate fee interest in a Unit and any easements or other interests in the Project or any portion thereof appurtenant to the Unit, as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.
- 1.12 Condominium Plan. "Condominium Plan" or "Plan" shall mean a plan recorded pursuant to California *Civil Code* section 1351 with respect to the Project and any amendments thereto which identifies the Common Area and each separate interest in the Project. The Condominium Plan consists of the following:
- (i) the plot plan entitled "Tract No. 406, Hacienda Carmel" which was recorded on March 27, 1962 in Vol. 7 of Maps Cities & Towns, at Page 60 and
- (ii) the plot plan entitled "Unit No. 2, tract No. 425, Hacienda Carmel" which was recorded on March 4, 1963, in the Vol. 7 of Maps Cities & Towns, at Page 83.
- 1.13 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.14 Corporations Code. "*Corporations Code*" shall mean the California *Corporations Code* as amended from time to time.
- 1.15 County. "County" shall mean the County of Monterey.
- 1.16 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Hacienda Carmel Community Association, recorded in the Office of the County Recorder of Monterey County, California, and any duly recorded amendments thereof.
- 1.17 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 8.13.
- 1.18 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Owners and Residents of one or more but less than all of the Units and which is appurtenant to a Unit or Units. An exclusive easement to

such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Unit; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement granted in this Declaration. The Exclusive Use Common Area appurtenant to each Unit consists of the following and no other portions of the Project constitute Exclusive Use Common Area:

1.18.1 Patio. "Patio" shall mean the private area adjacent to the rear of each Unit. Most but not all Patios are enclosed by a fence, railing, hedge or similar barrier. The perimeter boundaries of each Patio are to the exterior finished surfaces of any building walls, windows or other building surfaces enclosing the Patio and, if the Patio is enclosed, to the interior (finished, if applicable) surfaces of the fence, railing, hedge, or other barrier enclosing the Patio or, if the Patio is not enclosed, to a plane in space at the boundary of the concrete pad or other paving material of the Patio space. The lower boundaries of each Patio are to the surface of the concrete pad as originally installed by the developer and replacements thereof installed by the Association and the upper boundary is to a horizontal plane extended from the ceiling of the Unit that adjoins the Patio. Each Patio includes:

(i) the airspace encompassed by its boundaries, and

(ii) the surface of the earth not covered by the concrete pad and so much of the area beneath the surface of the earth as is necessary for the cultivating, landscaping, and drainage of the Patio.

1.18.2 Storage Area for Studio Unit. "Storage Area for Studio Unit" shall mean the area assigned to each studio Unit for purposes of personal storage. The perimeter boundaries of each Storage Area for Studio Unit shall be to the unfinished surfaces of the floor, walls, ceiling, and door. The storage areas for all Units other than studios constitute part of the Unit and do not constitute Exclusive Use Common Area.

1.18.3 Other Exclusive Use Common Area Including Fireplaces. The following items or components designed to serve a single Unit constitute Exclusive Use Common Area appurtenant to the Unit:

(i) locks and keys for exterior doors,

(ii) water lines from and including the shutoff valve within the Unit (for example and not by way of limitation, the shutoff valves for toilets or for bathroom or kitchen faucets),

(iii) internal and external telephone wiring as provided in *Civil Code* section 1351(i)(2),

(iv) spark arrestor, chimney flue, firebox, flue damper, and gas line, if applicable, of original mortared fireplaces as installed by the developer and replacements thereof installed by the Association, but excluding any franklin stove or other fireplace or chimney addition and any gas line for a fireplace other than a gas line as installed by the developer or replacement thereof installed by the Association.

- 1.19 First Mortgage/First Mortgagee. "First Mortgage" shall mean a Mortgage that has first priority over all other Mortgages. "First Mortgagee" shall mean the beneficiary under a First Mortgage.
- 1.20 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules.
- 1.21 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep. In the case of landscaping, "maintenance" or to "maintain" shall mean regular fertilizing, irrigation, pruning and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants.
- 1.22 Member. "Member" shall mean an Owner.
- 1.23 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments and Additional Charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents. A Member shall be deemed to be in Good Standing unless, after notice and an opportunity for hearing, pursuant to Article 12 ("Enforcement; Notice; Hearings"), the Board has found the Member to be not in Good Standing and has so notified the Member in accordance with *Civil Code* section 1363(h).
- 1.24 Mortgage. "Mortgage" shall mean a duly recorded deed of trust or mortgage in the conventional sense encumbering a Condominium.

- 1.25 Mortgagee. "Mortgagee" shall mean a beneficiary under a Mortgage and shall also include an insurer or governmental guarantor of a Mortgage including, without limitation, the Federal Housing Authority and the Department of Veterans Affairs.
- 1.26 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Condominium, including Contract Sellers but excluding Contract Purchasers, and excluding those persons having such interest merely as security for the performance of an obligation.
- 1.27 Patio. See Section 1.18 ("Exclusive Use Common Area").
- 1.28 Project. "Project" shall mean all of the real property described in this Declaration as comprising the Hacienda Carmel condominium project, including all structures and other improvements located at any time upon said real property, and such additional real property as may hereafter be brought within the jurisdiction of the Association.
- 1.29 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.12.
- 1.30 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.
- 1.31 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 deteriorated or 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. In the case of landscaping, "replacement" or to "replace" shall mean the removal and replanting of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not serviceable or the substitution of plants for hardscape or substitution of hardscape for plants.
- 1.32 Resident. "Resident" shall mean any person who resides in a Unit within the Project whether or not such person is an Owner.
- 1.33 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, operation, use, and occupancy of the Project, including the use of the Common Area and facilities, the personal conduct of Owners and Residents, members of their household, pets, tenants, invitees, and guests within the Project, enforcement of the Governing Documents, and any other matter that is within the jurisdiction

of the Association, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 1357.100 *et seq.*

- 1.34 Senior Housing Residency Restrictions. "Senior Housing Residency Restrictions" shall mean the residency policy adopted by the Board and referenced in Section 5.2 ("Senior Citizen Residential Use").
- 1.35 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.10.
- 1.36 Storage Area for Studio Unit. See Section 1.18 ("Exclusive Use Common Area").
- 1.37 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Unit, excluding any Units as to which an Owner is not then a Member in Good Standing.
- 1.38 Unit. "Unit" shall mean the elements of a Condominium that are not owned in common with the Owners of other Condominiums within the Project, which Units are shown as separately designated and numbered areas on the Condominium Plan. There are 300 Units in the Project.
- 1.38.1 Boundaries of Unit. The boundaries of each Unit are as follows:
- (i) the interior *unfinished surfaces* (exclusive of floor coverings, paint, paper, wax, tile, enamel, or other finishing) of the floors and ceilings of the living space and, in the case of all Units other than studios, of the storage area, at their respective elevations as shown on the Condominium Plan,
 - (ii) the interior *unfinished surfaces* (exclusive of paint, paper, wax, tile, enamel, or other finishing) of its perimeter walls, bearing walls, and fireplaces,
 - (iii) the *interior surfaces* of the windows (frame and sash) and sliding glass doors, and
 - (iv) the interior surface of the solid core front door and of the door to the storage area of the Unit, if applicable.
- 1.38.2 Included in Unit. Without limiting the generality of Section 1.38.1, above, the Unit *includes*:

- (i) the finishes or coverings on the interior surfaces of the floors, walls, and ceilings;
- (ii) the partition (non-bearing) walls within the boundaries of the Unit;
- (iii) all interior doors within the boundaries of the Unit and hardware of interior doors;
- (iv) any skylight in the ceiling of the living space or in any roof overhang serving the Unit;
- (v) heating vent covers and electrical outlets covers and switch plate covers within the boundaries of the Unit;
- (vi) any franklin stove or fireplace or chimney addition, other than an original mortared fireplace as installed by the developer and replacements thereof; and
- (vii) any gas lines for any fireplace other than as installed by the developer or replacement thereof installed by the Association.

1.38.3 Excluded from Unit. The Unit *does not include* the following:

- (i) bearing walls and structural framework except the finished surfaces thereof inside a Unit;
- (ii) spark arrestor, chimney flue, firebox, flue damper, and gas line, if applicable, of original mortared fireplaces as installed by the developer and replacements thereof installed by the Association, the items listed in this clause (ii) being Exclusive Use Common Area as defined in Section 1.18.3. (“Other Exclusive Use Common Area”); and
- (iii) any conduits, wiring, ducts, pipes, and flues even if located in non-bearing interior partition walls.

1.38.4 Existing Physical Boundaries Control. In interpreting deeds, the Declaration, and the Condominium Plan, it shall be conclusively presumed that the then existing physical boundaries of a Unit, whether as originally constructed or as reconstructed in accordance with the governing Documents, are its boundaries, rather than the metes and bounds or other description expressed in the deed, the Declaration, or the Condominium Plan, regardless of any settling or lateral movement of buildings and regardless of minor variance between the boundaries

shown on the deed, in the Declaration, or in the Condominium Plan and the actual existing physical boundaries.

ARTICLE 2 HOMEOWNERS ASSOCIATION

- 2.1 Management and Operation; Bylaws. The Association is an “association” as defined in *Civil Code* section 1351(a) and as such shall have the power and the authority to manage and operate the Project in accordance with the Governing Documents and the provisions of applicable law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. Provisions concerning the operation of the Association as a nonprofit mutual benefit corporation are set forth in the Bylaws.
- 2.2 Membership. Every Owner of a Condominium shall be a Member of the Association and shall remain a Member thereof until such time as his or her ownership of such Condominium ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.
- 2.3 Voting. Only Members in Good Standing shall be entitled to vote and, only one vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.
- 2.4 Association Rules. Subject to applicable law including *Civil Code* section 1357.100 *et seq.* regarding notice and procedures, the Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce Rules.
- 2.5 Relationship to Business Operations Conducted in Leased Areas. Pursuant to Section 9.1.7 (“Leasing of Common Area to Third Parties”), the Association leases several portions of the Common Area to independent commercial operators who, variously, currently conduct a six-bed assisted living facility business, a doctor’s office, and a beauty salon business. The Association’s relationship to these enterprises is strictly as a landlord and the Association does not regulate or control and has no other business relationship with or any responsibility whatsoever for these businesses or their operations.

ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION

- 3.1 Legal Description. The property subject to this Declaration and to the jurisdiction of the Association is described in Exhibit B.
- 3.2 Classification of Property. The property subject to this Declaration is a condominium project. All of the property subject to the Declaration is divided into the following categories:
- (a) Common Area,
 - (b) Exclusive Use Common Area,
 - (c) Units.
- 3.3 Ownership of Condominium. Ownership of each Condominium within the Project shall include:
- (i) a designated Unit,
 - (ii) the respective undivided one-three hundredth (1/300) interest as tenant in common in Tract No. 406 (also known as Tract No. 425) as shown on the Condominium Plans,
 - (iii) a Membership in the Association, and
 - (iv) any exclusive easements or easements appurtenant to such Unit upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan(s).
- 3.4 Undivided Interests Cannot Be Changed. The undivided interests in the Common Area set forth is clause (ii) of Section 3.3 cannot be changed except with the approval of one hundred percent (100%) of the Owners or as provided in Section 11.8 ("Repair or Rebuilding After Condemnation") following condemnation of a portion of the Project.
- 3.5 No Separate Conveyance of Undivided Interests. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the