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SECOND AMENDED AND RESTATED BYLAWS OF
SUNSET PARK OF SUNNYVALE HOMEOWNERS ASSOCIATION**

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SECOND AMENDED AND RESTATED BYLAWS OF SUNSET PARK OF SUNNYVALE HOMEOWNERS ASSOCIATION

ARTICLE 1 NAME AND LOCATION

The name of the corporation is SUNSET PARK OF SUNNYVALE HOMEOWNERS ASSOCIATION, which is hereinafter referred to as the "Association." The principal office of the Association shall be located in Santa Clara County, California or at such other place reasonably convenient to the Development as the Board of Directors may from time to time establish.

ARTICLE 2 DEFINITIONS

All capitalized terms that are not defined in these Bylaws shall have the meanings ascribed to them in the Declaration, unless the context requires otherwise.

- 2.1 Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.
- 2.2 Articles. "Articles" shall mean the Second Restated Articles of Incorporation of Sunset Park of Sunnyvale Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 2.3 Association. "Association" shall mean Sunset Park of Sunnyvale Homeowners Association, its successors and assigns.
- 2.4 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 2.5 Bylaws. "Bylaws" shall mean the Second Amended and Restated Bylaws of the Association as they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.

- 2.6 Capital Improvement. "Capital Improvement" shall mean the original construction of an improvement that did not previously exist, as distinguished from the repair, upgrading, or replacing of an existing improvement.
- 2.7 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, subject to the provisions of the governing documents.
- 2.8 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.
- 2.9 Declaration. "Declaration" shall mean the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Sunset Park of Sunnyvale Homeowners Association, recorded in the Office of the County Recorder of Santa Clara County, California, and any amendments thereof.
- 2.10 Development. "Development" shall mean all the real property described in the Declaration comprising the Sunset Park of Sunnyvale Homeowners Association planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- 2.11 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules, and the policies and resolutions adopted by the Board and distributed to the Members.
- 2.12 Lot. "Lot" shall mean any plot of land shown upon any map recorded against the Development upon which a Residence has been constructed, excluding the Common Area.
- 2.13 Member. "Member" shall mean an Owner.
- 2.14 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents and who is in compliance with all of the provisions of the Governing Documents.
- 2.15 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, including Contract Sellers, but excluding Contract

Purchasers and excluding those persons having such interest merely as security for the performance of an obligation.

- 2.16 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.
- 2.17 Resident. "Resident" shall mean any person who resides on a Lot within the Development whether or not such person is an Owner as defined in Section 2.15 above.
- 2.18 Rules. "Rules" shall mean the rules and regulations 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.
- 2.19 Simple Majority. "Simple Majority" shall mean a majority of the votes represented and voting at a meeting at which a quorum is present or by written ballot in conformity with *Corporations Code* section 7513 in which the number of votes cast by ballot equals or exceeds the number required to establish a quorum.
- 2.20 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 Lots as to which an Owner is not then a Member in Good Standing.

ARTICLE 3 MEMBERSHIP AND VOTING

- 3.1 Membership. Membership in the Association 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. Upon becoming the Owner of a Lot, each Owner shall automatically be a Member of the Association and shall remain a Member until such time as his or her Lot ownership ceases for any reason. Membership in the Association 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 and then only to the transferee or Mortgagee, as the case may be, of such Lot. 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 Association shall pass automatically to the transferee.

- 3.2 Voting. Members in Good Standing shall be entitled to cast one (1) vote for each Lot owned. In the event more than one (1) person owns a given Lot, the vote for such Lot shall be exercised as the Owners among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If the joint Owners of a Lot are unable to agree among themselves as to how their vote or votes are to be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of the other Owners of that Lot. The vote at any meeting of Members may be by voice vote or by ballot; provided, however, that all elections of Directors must be by ballot.
- 3.3 Delegation of Membership Rights. A Member may delegate rights and privileges of membership as provided in Section 2.5 of the Declaration. Subject to the provisions of the Declaration, it is the express purpose and intent of the provisions of this Section 3.3 to limit the right of use and enjoyment of the Common Area to Residents of the Development and their guests.
- 3.4 Record Date. The Board of Directors may fix a time not more than ninety (90) days and not less than ten (10) days preceding the date of any meeting of the Members as a record date for determining the Members entitled to notice of and to vote at any such meeting. If the Board sets a record date, only those persons or entities identified as Members in the records of the Association on the date so fixed shall be entitled to notice of such meeting and only Members in Good Standing as of the record date shall be entitled to vote at such meeting. In the event no such record date is fixed by the Board of Directors, the record date for the determination of Members entitled to notice of and to vote at any meeting shall be the thirtieth (30th) day preceding the date of the meeting as of 8:00 a.m. on such day.

ARTICLE 4 MEETINGS OF MEMBERS

- 4.1 Annual Meeting. The Annual Meeting of the Members shall be held during the month of April of each year, on a date and at a time and place to be designated by the Board of Directors, upon proper written notice to all of the Members.
- 4.2 Special Meetings. Special Meetings of the Members may be called at any time by the President or by the Board of Directors or pursuant to the

written request of Members entitled to cast at least five percent (5%) of the Total Voting Power of the Membership.

- 4.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by or at the direction of the Secretary or other person authorized to call a meeting. Written notice shall be mailed first class, postage prepaid, or otherwise delivered at least ten (10) but not more than ninety (90) days before such meeting, to each Member entitled to vote at such meeting, except that in the case of a special meeting called pursuant to a written request of Members, notice of such special meeting shall be mailed or otherwise delivered within twenty (20) days after receipt of such written request by the Board, and the date of such special meeting shall be set by the Board and shall be not sooner than thirty-five (35) days nor later than ninety (90) days after the date of the Board's receipt of such written request. Notice of meetings shall be addressed or otherwise delivered to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Notice of any meeting of Members shall specify the date, hour, and place of the meeting, and the general nature of those matters which the Board intends to present for action by the Members.
- 4.4 Conduct of Meetings. All meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. A reasonable time limit for all Members to speak at a meeting of the Members shall be established by the Board of Directors.
- 4.5 Place of Meetings. Annual and special meetings shall be held at a location within the Development, provided that the Board may designate, by resolution, a convenient place located as close as reasonably practicable to the Development.
- 4.6 Quorum. The presence at any meeting, in person or by proxy, of Members entitled to cast at least one-third (1/3) of the Total Voting Power shall constitute a quorum for the transaction of any business, except as otherwise provided in the Governing Documents. If, however, such quorum shall not be present or represented at any meeting, the Members otherwise entitled to vote at that meeting shall have power to adjourn the meeting from time to time, to be reconvened on a later date not more than forty-five (45) days from the date of the adjourned meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented.

- 4.7 Proxies. At all meetings of the Members, each Member may vote in person or by proxy. All proxies shall be in writing and shall be filed with the Secretary. Any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it or a duly-executed proxy bearing a later date is filed with the Secretary of the Association; except that no proxy shall be valid after the expiration of eleven (11) months from the date of its execution and provided further that a proxy shall automatically cease upon conveyance by the Member of his or her Lot.
- 4.8 Form of Proxy. A proxy covering any of the following matters shall not be valid unless it sets forth the general nature of the matter to be voted on:
- (a) removal of any or all directors pursuant to *Corporations Code* section 7222;
 - (b) filling a vacancy on the Board created by the removal of a director or to fill a vacancy not filled by the directors pursuant to *Corporations Code* section 7224;
 - (c) voting on a transaction involving an interested director pursuant to *Corporations Code* section 7233;
 - (d) amending the Articles of Incorporation or the Bylaws to repeal, restrict, create, or expand proxy rights pursuant to *Corporations Code* section 7613(f)(1);
 - (e) amending the Articles of Incorporation pursuant to *Corporations Code* section 7812;
 - (f) voting on the sale or exchange of all or substantially all of the Association assets pursuant to *Corporations Code* section 7911(a)(2);
 - (g) voting on a merger pursuant to *Corporations Code* section 8012;
 - (h) voting on amendments to principal terms of a merger agreement pursuant to *Corporations Code* section 8015(a);
 - (i) voting to wind up or dissolve the Association as a corporation pursuant to *Corporations Code* section 8610; and
 - (j) voting on a plan of distribution of Association assets in the event of dissolution pursuant to *Corporations Code* section 8719.

Any form of proxy distributed to 10 or more Members shall afford an opportunity on the proxy to specify a choice between approval and disapproval of each matter or group of matters intended, at the time the proxy is distributed, to be acted upon at the meeting for which the proxy is solicited and shall provide, subject to reasonable specified conditions, that where a choice is specified the vote shall be cast in accordance with that choice.

4.9 Vote of the Members. If a quorum is present, in person or by proxy, the affirmative vote of a majority of the voting power so present and voting on any matter (that is, a Simple Majority) shall constitute the act of the Members, unless the approval of a greater number or proportion of Members is required by any provision of the Governing Documents or of law.

4.10 Action Without A Meeting.

- (a) Any action which may be taken at a regular or special meeting, other than the election of Directors, may be taken without a meeting of Members, if the Association distributes a written ballot to every Member entitled to vote. Such ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association, which shall be a date not earlier than thirty (30) days after distribution of the written ballot to the Members;
- (b) Approval by written ballot shall be valid only when the number of votes cast equals or exceeds the quorum that would be required if the action were taken at a meeting, and the number of approvals equals or exceeds the number of votes that would be required to approve the action if it were taken at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot; and
- (c) The ballot solicitation shall identify both the number of responses needed to meet the quorum requirement and the percentage and/or number of approvals necessary to pass the measure submitted and shall specify the time by which the ballot must be received by the Association in order to be counted.

ARTICLE 5 BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

- 5.1 **Number of Directors.** The affairs of this Association shall be managed by or under the direction of a board of seven (7) Directors.
- 5.2 **Qualification and Disqualification of Directors.** Only persons who are Members in Good Standing of the Association shall be eligible to be elected to or serve on the Board. Only one Owner of a particular Lot may serve on the Board at any time. A person shall be deemed disqualified under the following circumstances: (i) the person is found by a court of competent jurisdiction to be of unsound mind or has been convicted of a felony; (ii) the person fails within sixty (60) days after receiving notice of election to accept such office, either in writing or by attending a meeting of the Board of Directors as a Director; (iii) the person is absent from three (3) consecutive meetings of the Board; or (iv) the person ceases to be an Owner or ceases to be a Member in Good Standing.
- 5.3 **Election and Term of Office.** At annual meeting of the Association, the Members shall elect Directors for terms of three (3) years each to replace those Directors whose terms are then expiring. In successive years, three (3) Directors, two (2) Directors, and two (2) Directors, respectively, shall be elected. Cumulative voting shall not be permitted. Each Director elected shall serve until the expiration of his or her term and thereafter until a successor is elected, or until the earlier disqualification, death, resignation, or removal of such Director.
- 5.4 **Removal.** Any Director may be removed from the Board, with or without cause, by the vote of a Simple Majority of the Members at a meeting or by written ballot. No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of his or her term of office.
- 5.5 **Vacancies.** A vacancy shall exist on the Board of Directors in the event of the disqualification, death, resignation, or removal of any Director, or if the authorized number of Directors is increased, or if the Members fail to elect the full authorized number of Directors. A reduction in the authorized number of Directors shall not cause removal of a Director prior to the expiration of his or her term. The Board of Directors, by a majority vote of the Directors who meet all of the qualifications for Directors as set forth in Section 5.2, above, may declare vacant the office of any Director who fails or ceases to meet any required qualification that was in effect at the beginning of that Director's current term of office.

- 5.6 Filling Vacancies. Any vacancy occurring on the Board of Directors, except a vacancy created by the removal of a Director, may be filled by approval of the Board of Directors, or if the number of Directors then in office is less than a quorum, by the vote of a majority of the remaining Directors at a meeting of the Board, or by unanimous written consent of the Directors then in office, or by a sole remaining Director. A Director so chosen shall serve the remainder of the term of office of the Director whom he or she replaces. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. If the Board of Directors accepts the resignation of a Director tendered to take effect at a future time, the Board or, if the Board fails to act, the Members may elect a successor to take office when the resignation becomes effective.
- 5.7 Compensation. No Director shall receive compensation for any service he or she may render to the Association as a Director. However, upon approval by the Board, any Director may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.

ARTICLE 6 NOMINATION AND ELECTION OF DIRECTORS

- 6.1 Nomination. Any Member in Good Standing may place his or her name in nomination for election to the Board of Directors by giving written notice to the President or Secretary of the Association at any time before notice of the election of Directors is given to the Members. The names of all persons known by the Board to be candidates for election to the Board shall be set forth in the notice of the election. Nominations may also be made from the floor at any such meeting.
- 6.2 Election. At each election of Directors, the Members in Good Standing or their proxies may cast, in respect to each position on the Board to be filled, one vote for each Lot owned. The persons receiving the largest number of votes shall be elected. Cumulative voting shall not be permitted. The method for voting for Directors shall be as set forth in Section 3.2 of these Bylaws.

ARTICLE 7 MEETINGS OF DIRECTORS

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

- 7.2 Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice to the Directors, at a place within the Development and on a day and at a time as fixed from time to time by resolution of the Board or, upon proper notice which conforms to the provisions of Section 7.4 of these Bylaws, at another place, day, and time as set forth in such notice. Should the date for any meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. In the event the Board should determine that the business to be transacted by the Board does not reasonably justify monthly meetings, then regular meetings of the Board shall be held at such intervals as the Board may determine, but not less frequently than quarterly.
- 7.3 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two (2) Directors.
- 7.4 Notice to Directors. Except as otherwise provided in Section 7.2 of these Bylaws, notice of each meeting of the Board shall be communicated to the Directors not less than four (4) days prior to a regular meeting, and not less than seventy-two (72) hours prior to a special meeting; provided that shorter notice may be given in the case of a bona fide emergency; and provided further that notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting, whether before or after the meeting.
- 7.5 Notice to Members. Except for bona fide emergency meetings and executive sessions, as defined by law, at least four (4) days prior written notice of the day, time, and place of each meeting of the Board of Directors, whether regular or special, shall be given to all Members by posting the notice in a prominent place or places in the Common Area and shall also be given by mail to any member who has requested such notice in writing. Notice may also be given, at the Board's option, by mailing or delivery to each Residence, by newsletter or by other means of communication reasonably designed to provide prior actual notice of such meeting.
- 7.6 Open Meeting. Regular and special meetings of the Board of Directors shall be open to all Members of the Association, except when the Board meets in executive session. A reasonable time limit for all Members to speak to the Board shall be established by the Board.
- 7.7 Executive Session. The Board of Directors may meet in executive session to confer with legal counsel or to discuss and vote upon personnel

matters, Member discipline, litigation in which the Association is or may become involved, and matters that relate to the formation of contracts between the Association and others and for the purpose of meeting with a Member, upon such Member's request, regarding such member's payment of Assessments. The Board shall meet in executive session when a Member requests to meet with the Board to discuss payment of the Member's assessments and in any matter relating to the discipline of a Member if requested to do so by that Member, and that Member and any other person(s) whose participation is, in the judgment of the Board, necessary or appropriate shall be entitled to attend the executive session.

- 7.8 Telephone Participation. To the extent permitted by law, including, without limitation, *Civil Code* section 1363.05 and *Corporations Code* section 7211, Directors may participate in regular or special Board meetings through the use of conference telephone, electronic video screen communications, or other communications equipment.
- 7.9 Quorum. A majority of the number of Directors then in office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly-held meeting at which a quorum is present shall be regarded as the act of the Board.
- 7.10 Minutes of Meetings of Directors. Within thirty (30) days after the date of any meeting of the Board, the Board shall make available to the Members either (i) the minutes of that meeting as adopted by the Board, (ii) those minutes as proposed for adoption which shall be marked to indicate draft status, or (iii) a summary of the minutes. Any matter discussed in an executive session shall be generally noted in the minutes of the Board and minutes of executive sessions shall not otherwise be required. Copies of the minutes, proposed minutes, or summary of minutes shall be provided to any Member of the Association upon request and upon reimbursement of the Association's costs in providing such copies. Members of the Association shall be notified annually in writing either at the time that the pro forma budget required under section 1365 of the *Civil Code* is distributed or at the time of any other general mailing to the entire membership of the Association of their right to obtain copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

ARTICLE 8 POWERS AND DUTIES OF THE BOARD OF DIRECTORS

- 8.1 **Powers.** In addition to such other powers as may be expressly set forth in the Governing Documents or provided by law, the Board of Directors shall have the power to:
- 8.1.1 **Rules and Regulations.** Adopt, publish, amend, repeal, and enforce rules and regulations governing the administration, management, operation, use, and occupancy of the Development, including the use of the Common Area and facilities, the personal conduct of the Members and their tenants and guests within the Development, and any other matter which is within the jurisdiction of the Association;
- 8.1.2 **Contracts.** Authorize any officer or officers to enter into any contract in the name of, or on behalf of, the Association. Unless expressly authorized by resolution of the Board, no officer shall have any power or authority to bind the Association or to render the Association liable for any purpose or on any account; No contract with any person or entity to supply or furnish the Association with goods or services shall be for a term in excess of one (1) year, except upon the prior affirmative vote or written consent of a Simple Majority of the Members; provided, however, that the foregoing shall not apply to (i) a contract with a public utility company, if the rates charged for the materials or services to be furnished are regulated by the California Public Utilities Commission, the term of which contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; (ii) prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, which policy or policies shall permit short rate cancellation by the insured; (iii) agreements for cable television services and equipment not to exceed five (5) years' duration;
- 8.1.3 **Determination of Good Standing.** Determine, after notice to the Member and an opportunity for a hearing by the Board, that a Member is not a Member in Good Standing during any period in which the Member is in default in the payment of any Assessment, fine, or other charge levied by the Board or is in violation of any provision of the Governing Documents; however, a Member shall not be denied any privileges of membership except upon an explicit finding by the Board of Directors, after notice and an opportunity for a hearing, that a Member is not a Member in Good Standing for specified reasons. A Member

found by the Board to be not a Member in Good Standing shall be deemed to continue in that status until the Board shall make a determination, either upon the Board's own initiative or upon the request of the Member, that such Member is, once again, a Member in Good Standing of the Association;

8.1.4 Sanctions; Hearings; Continuing Violations. Establish and impose monetary penalties (fines) for the infraction of any provision of the Governing Documents, in accordance with a schedule of monetary penalties adopted by the Board and distributed to all Members, such fines or penalties not to exceed a maximum of One Hundred Dollars (\$100.00) for each violation; and suspend the voting or other membership rights and privileges of a Member, including the right to use the recreational facilities during any period in which such Member shall be in default in the payment of any Assessment, fine, or other charge levied by the Association, and/or for any infraction of the Governing Documents, including any reimbursement for all costs incurred for enforcing the governing documents, including, but not limited to, attorney's fees. The imposition of such sanctions shall be subject to the following conditions:

- (a) When the Board makes the determination to meet to consider or impose any sanction or discipline upon a Member, the Board shall notify such Member in writing by either personal delivery or first class mail at least ten (10) days prior to the date of such meeting of the date, time and place of the meeting, the nature of the alleged violation for which sanctions or discipline may be imposed and that the Member has a right to attend the meeting and to address the Board.
- (b) If, at or after the meeting conducted as provided in subsection (a) above, the Board decides to impose a sanction or other discipline on a Member, the Board shall notify the Member in writing of its decision by either personal delivery or first class mail within fifteen (15) days following the decision to impose a sanction or other discipline.
- (c) The imposition of a sanction or other discipline shall not be effective until at least five (5) days after the date of the written notice required under subsection (b) above and

shall not be effective in any event unless the Board has complied with the provisions of this Section 8.1.4.

In the case of a continuing violation, such as an uncorrected architectural violation, where a Member fails to cease or remedy a violation after notice from the Board to do so, the Board may deem such continuing violation to constitute two (2) or more separate and distinct violations of the same Governing Document provision and may impose separate and successive sanctions for each such violation; however, the Board shall not treat any such continuing violation as a separate and distinct violation and impose a separate sanction therefor more than once during any thirty (30) day period. It is the intent and purpose of this provision to authorize and empower the Board in exercise of its discretion to impose a monetary fine or other sanction against a Member for a continuing violation of the same Governing Document provision once during each successive thirty (30) day period, provided that each time the Board decides to impose a sanction, it shall provide the affected Owner with notice and an opportunity to be heard by the Board prior to the effective date of any such sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous Board hearing relating to the subject continuing violation.

- 8.1.5 Manager. Engage the services of a manager or management company as either an employee or an independent contractor, and engage such other employees or independent contractors as the Board may deem necessary, and to prescribe their duties;
- 8.1.6 Professional Advisors. Consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants, and other professionals in carrying out its authority and responsibility under the Governing Documents and the law, and to pay for such professional services;
- 8.1.7 Investment of Reserve Funds. Invest Association reserve funds in prudent investments subject to the provisions of Section 8.2.5 of these Bylaws;
- 8.1.8 Entry for Repairs. Enter a Lot, when necessary, in connection with Maintenance, Repair, or Replacement for which the Association is responsible or which it is authorized to perform, provided that the Board shall provide the Owner with reasonable

prior notice, except that in the case of a bona fide emergency, notice shall be given as the exigencies of the situation reasonably permit;

- 8.1.9 Property Taxes. Pay all real property taxes and assessments levied upon any property within the Development to the extent not separately assessed to the Owners. Provided that any such taxes are paid or that a bond insuring the payment is posted, such taxes and assessments may be contested or compromised by the Association prior to the sale or other disposition of any property to satisfy the payment of such taxes;
- 8.1.10 Mergers. To the extent permitted by law, participate in mergers and consolidations with other nonprofit organizations organized for the same purposes as this Association, provided that any such merger or consolidation shall be approved by the affirmative vote or written consent of at least two-thirds (2/3) of the total voting power of the Association;
- 8.1.11 Association Property. Subject to the provisions of the Declaration, including any required approval of Members, acquire, own, hold, convey, transfer, dedicate, or otherwise dispose of real or personal property consistent with the purposes and powers of the Association and the management, administration, and operation of the Development or the business and affairs of the Association, and grant and convey easements, licenses, and rights of way in, over, upon, or under the Common Area;
- 8.1.12 Indemnification of Agents. Indemnify and hold harmless, to the maximum extent permitted by California law, each person who is or at any time was a director, officer, employee, or agent of the Association or member of any committee appointed by the Board from and against any and all claims, liabilities, expenses, judgments, fines, settlements, and other amounts, as those terms are defined by California law, actually and reasonably incurred by any such person, and to which any such person shall become subject by reason of his or her being a director, officer, employee, or agent of the Association or member of any committee appointed by the Board;
- 8.1.13 Bank Accounts, Borrowing. Open bank accounts, designate signatories upon such bank accounts, and borrow money on

behalf of the Association, subject to any restrictions set forth in the Governing Documents; and

- 8.1.14 Other Powers and Duties. Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by other provisions of the Governing Documents, and undertake any action on behalf of the Association as the Board shall deem necessary or proper in furtherance of the purposes and powers of the Association and/or the interests of the Association and its Members.
- 8.1.15 Limitation of Powers. The powers of the Board shall be subject to the limitations set forth in Article 5 of the Declaration.
- 8.2 Duties. It shall be the duty of the Board of Directors to:
 - 8.2.1 Records and Minutes. Cause to be kept a complete record of all its acts and the corporate affairs, including an accurate and current record of the Members setting forth their names and addresses, adequate and correct books and records of account, and minutes of the proceedings of the Members, the Board, and committees of the Board;
 - 8.2.2 Filing of Biennial Statements With Secretary of State. Cause to be filed every other year the statements required by Section 1363.6 of the *Civil Code* and Section 8210 of the *Corporations Code*;
 - 8.2.3 Pro Forma Budget. Prepare and distribute to the Members annually, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of each fiscal year, a pro forma operating budget which shall include all of the following:
 - (a) An estimate of the Association's revenue and expenses for such fiscal year on an accrual basis;
 - (b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to law, which summary shall be printed in bold type and shall include all of the following:
 - (1) The current estimated replacement cost, estimated remaining life, and estimated useful life

of each major component the Association is obligated to maintain, restore, repair, or replace;

- (2) A current estimate, as of the end of the fiscal year for which the study is prepared, of the amount of cash reserves necessary to maintain, restore, repair, or replace such major components;
 - (3) The current amount, as of the end of the fiscal year for which the study is prepared, of accumulated cash reserves actually set aside to maintain, restore, repair, or replace such major components;
 - (4) If applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to Subparagraph (3) above. In lieu of complying with the requirements set forth in this Subparagraph (4), if the Association is obligated to issue a review of its financial statement pursuant to Section 8.2.7 below, the Association may instead include in such review all of the information required by this Subparagraph (4);
 - (5) The percentage of the amount of cash reserves necessary [per Subparagraph (2)] that is represented by the amount of cash reserves actually set aside [per Subparagraph (3)];
- (c) A statement as to whether the Board of Directors has determined or anticipates that the levy of one or more special assessments will be required to restore, repair, or replace any of the major components or to provide adequate reserves therefor; and

- (d) A general statement setting forth the procedures used for the calculation and establishment of reserves to defray the future cost of repair, replacement, or additions to those major components that the Association is obligated to maintain, restore, repair, or replace.

In lieu of the distribution of the pro forma operating budget, the Board may distribute a summary of such budget to all Members together with a written notice that the budget is available at the office of the Association or at another suitable location within the boundaries of the Development and that copies will be provided to a Member upon a Member's request and at the expense of the Association. If any Member so requests, the Association shall provide a copy of the pro forma operating budget to such Member by United States mail first-class postage prepaid, and such copy shall be mailed within five (5) days of such request. The written notice that is distributed to each Association Member as set forth herein shall be set forth in at least 10-point bold type on the front page of the summary of the budget;

8.2.4 Reserve Study. At least once every three (3) years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore or maintain as part of a study of the reserve account requirements of the Development if the current replacement value of such major components is equal to or greater than one-half of the gross budget of the Association for the fiscal year, excluding the Association's reserve account for that year. The Board shall review the reserve study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The reserve study required by this section shall include the minimum requirements specified in *Civil Code* section 1365.5 or comparable successor statute;

8.2.5 Reserve Funds. Not expend funds designated as reserve funds for any purpose other than the maintenance, restoration, repair, or replacement of, or litigation involving the maintenance, restoration, repair, or replacement of, major components which the Association is obligated to maintain, restore, repair, or replace and for which the reserve fund was established; provided, however, that the Board may authorize a temporary transfer of money from a reserve fund to the Association's

general operating fund to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund, and provided, further, that any such transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except as otherwise expressly provided by law. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account;

8.2.6 Investment of Reserve Funds. Manage and invest Association reserve funds in a prudent manner designed to achieve the primary objective of preserving principal while realizing a reasonable return and to assure the availability of funds as they are needed based upon the most recent reserve fund study obtained by the Board as provided in these Bylaws and by law;

8.2.7 Review of Accounts. Review the Association's operating and reserve accounts at least in accordance with the following minimum requirements:

- (a) Review a current reconciliation of the Association's operating accounts on at least a quarterly basis;
- (b) Review a current reconciliation of the Association's reserve accounts on at least a quarterly basis;
- (c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget;
- (d) Review the latest account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts; and
- (e) Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

As used in this Subsection and Article 8, the term "reserve accounts" shall mean both of the following: (i) monies that the Board has identified in its annual budget for use to defray the future costs of repair or replacement of, or additions to, those

major components which the Association is obligated to maintain, restore, repair, or replace, and (ii) the funds received and not yet expended or disposed of from either a compensatory damage award or settlement to the Association from any person or entity for injuries to property, real or personal, arising from any construction or design defects, which funds shall be separately itemized from the funds described in (i) above;

8.2.8 Review of Annual Financial Statement. For any fiscal year in which the gross income to the Association exceeds Seventy-five Thousand Dollars (\$75,000.00), distribute to all Members of the Association within one hundred twenty (120) days after the close of such fiscal year a review of the financial statements of the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy;

8.2.9 Notification Regarding Insurance Coverage. In accordance with *Civil Code* section 1365, within sixty (60) days preceding the beginning of the Association's fiscal year, the Association shall prepare and distribute to all Members a summary of the Association's property, general liability, fidelity, and earthquake and flood insurance policies, if any. The summary shall include the name of the insurer, the type of insurance, the policy limits of the insurance, and the amount of deductibles, if any. The Association's disclosure obligations may be satisfied by distributing to the Members a copy of the insurance policy declaration page, so long as that page presents the information specified in the preceding sentence. As soon as reasonably practicable, the Association shall notify the Members by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

The summary distributed pursuant to this Section 8.2.9 shall contain, in at least 10-point boldface type, the following statement:

This summary of the Association's policies of insurance provides only certain information, as required by Civil Code Section 1365(e), and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association Member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members should consult with their individual insurance broker or agent for appropriate additional coverage.

8.2.10 Annual Notifications to Members. Distribute to the Members annually:

- (a) the written notice required by *Civil Code* section 1365.1 which shall be distributed during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year;
- (b) statement describing the Association's policies and practices in enforcing lien rights and other legal remedies for default in payment of assessments as required by *Civil Code* section 1365(d);
- (c) a summary of the statutory provisions relating to employing alternative dispute resolution procedures in certain matters related to enforcement of the governing documents which specifically references *Civil Code* section 1354 and which includes the language required by section 1354(i); the summary shall be provided either at the time the budget required by Section 8.2.3 of these Bylaws is distributed or in the manner specified in *Corporations Code* section 5016;

- (d) a copy of the procedures applicable to imposition of a fine or other monetary penalty, suspension of a Member's rights and privileges, or other sanctions, pursuant to California *Civil Code* section 1363(g);
 - (e) a notice and statement concerning the insurance carried by the Association as required by Section 8.2.9 of these Bylaws and *Civil Code* section 1365(e); and
 - (f) a statement explaining the Members' right to obtain copies of minutes of meetings of the Board as required by Section 7.9 of these Bylaws and by *Civil Code* section 1363.05(e);
- 8.2.11 Supervision. Supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;
- 8.2.12 Notice of Assessments. As more fully provided in the Declaration, (i) send written notice to each Owner in advance of each fiscal year of the regular assessment levied against his or her Lot for that fiscal year; and (ii) collect assessments levied by the Association by foreclosing the lien against any property for which assessments are not paid as required in the Declaration and/or by bringing an action at law against the Owner personally obligated to pay the same;
- 8.2.13 Certificate of Payment of Assessments. Issue, or cause an appropriate officer to issue, upon demand by any proper person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- 8.2.14 Insurance. Procure and maintain adequate casualty, liability and other insurance on property owned by the Association, and other appropriate insurance, as follows:
- (a) a master policy of fire and other casualty insurance covering the full insurable replacement value of the improvements in the Development including the Residences as well as Common Area with extended coverage, in the name of the Association for the benefit of all Owners;

- (b) liability insurance insuring the Association and the Owners and members of their households against any liability incident to the ownership, occupancy and/or use of the Common Area, with limits of liability to be set by the Board but in no event less than those set forth in *Civil Code* section 1365.7 and/or section 1365.9, such limits and coverage to be reviewed at least annually by the Association and increased or decreased in its discretion;
- (c) workers' compensation insurance to the extent necessary to comply with any applicable laws;
- (d) standard fidelity bond or a policy of fidelity insurance covering all members of the Board of Directors and Officers of the Association and other employees of the Association in an amount which shall be determined by the Board of Directors; and
- (e) any other insurance deemed necessary or prudent by the Board of Directors of the Association, including, without limitation, flood insurance and/or earthquake insurance;

The amount, term and coverage of any policy required under this Section 8.2.14 (including the type of endorsements, the amount of any deductible, the names insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall be determined by the Board in its discretion.

The premiums for any insurance obtained by the Association shall be a Common Expense of the Association and shall be paid for out of the operating fund of the Association; provided however, that the amount of any deductible relating to any insurance obtained by the Association shall be borne by the Owner or Owners of any property affected by any loss covered by such insurance;

Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

Any insurance policy maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Residences and mortgagees.

No Owner shall separately insure the improvements on his or her Lot against loss by fire or other casualty covered by any insurance policy carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance shall be chargeable to the Owner who acquired such other insurance. The insurance maintained by the Association shall not cover an Owner's personal property and shall not cover personal liability for damages or injury occurring on an individually owned Lot. Any Owner may insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements or upgrades made by an Owner within his or her Lot may be separately insured by the Owner but the insurance is to be limited to the type and nature of coverage common known as "tenant's improvements."

The Association, and its Directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

- 8.2.15 Enforcement of Governing Documents. Enforce the provisions of the Governing Documents, as more particularly set forth in the Declaration, and perform all acts required of the Board under the Governing Documents or required by law.
- 8.2.16 Results of Membership Vote. For a period of sixty (60) days following the conclusion of an annual, regular, or special meeting of Members, upon written request from a Member, forthwith inform the Member of the result of any particular vote of the Members taken at the meeting, including the number of

memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of directors, the Association shall report the number of votes cast for each nominee for director.

ARTICLE 9 OFFICERS AND THEIR DUTIES

- 9.1 Enumeration of Offices. The officers of this Association shall be a President and Vice-President, a Secretary, and a Chief Financial Officer, and such other officers as the Board of Directors may, from time to time, by resolution appoint. The President and Vice-President shall at all times be members of the Board of Directors.
- 9.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors, following each annual meeting of the Members.
- 9.3 Term. The officers of this Association shall be elected annually by the Board, and each shall hold office for one (1) year terms, unless he or she shall sooner resign, be removed by the Board, or otherwise be disqualified to serve.
- 9.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.
- 9.5 Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he/she replaces, subject to the Board's right to remove an officer.
- 9.7 Multiple Offices. The offices of Secretary and Chief Financial Officer may be held by the same person. No person shall simultaneously hold more

than one of any of the other offices, except in the case of special offices created pursuant to Section 9.4 of this Article.

- 9.8 President. The President shall be the chief executive officer of the Association and shall, subject to control of the Board of Directors, have general supervision, direction, and control of the affairs and the other officers and the employees and agents of the Association. The President shall preside at all meetings of the Members and at all meetings of the Board of Directors, shall have the general powers and duties of management usually vested in the office of the President of an Association, and shall have such other powers and duties as may be prescribed by the Board of Directors and the Bylaws, subject, however, to any limitations contained in the Declaration.
- 9.9 Vice-President. In the absence or disability of the President, the Vice-President shall perform all the duties of the President, and when so acting, shall have all of the powers of, and be subject to all of the restrictions upon, the President. The Vice-President shall have such other powers and perform such other duties as, from time to time, may be prescribed by the Board of Directors.
- 9.10 Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board of Directors may prescribe, a book of minutes of all meetings of Directors, Members, and Committees of the Board setting forth the time and place of holding of such meetings; whether regular or special, and if special, how authorized; the notice thereof given; the names of those present at Directors or Committee meetings; the number of memberships and votes present or represented at Members meetings; and all the proceedings thereof. The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors required by the Bylaws or by law to be given and shall maintain a proper record of the giving of such notice, and shall keep the books, records, and documents of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.
- 9.11 Chief Financial Officer. The Chief Financial Officer shall be responsible for the receipt and deposit in appropriate accounts of all monies of the Association and shall cause disbursement of such funds as directed by resolution of the Board of Directors; may sign all checks and promissory notes of the Association; shall keep proper books of account; shall cause an annual review of the Association's books and financial statements to be made by a public accountant at the completion of any fiscal year for which such review is required by law or as determined by the Board; shall

assist the Board in preparation of an annual budget and a statement of income and expenditures to be presented to the Members of the Association as provided by law; and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.

ARTICLE 10 COMMITTEES

The Board may appoint such committees as it deems appropriate in carrying out the powers and purposes of the Association. Any "committees of the Board" (that is, a committee consisting only of Directors, as referred to in *Corporations Code* section 7212) shall consist of at least two (2) Directors and shall have such powers and duties as the Board shall determine, subject to the limitations of section 7212.

ARTICLE 11 BOOKS, RECORDS AND FUNDS

- 11.1 Record Keeping. The accounting books and records of the Association and the minute books of proceedings of the Members, the Board, and committees of the Board shall, upon written request and during reasonable hours, be subject to inspection by any Member for any purpose, specified in writing, which is reasonably related to such Member's interest as a Member of the Association. The Governing Documents shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost. The Board may adopt and publish reasonable rules and regulations establishing procedures relating to a Member's inspection and obtaining copies of Association records.
- 11.2 Checks, Drafts, and Evidences of Indebtedness. All checks, drafts, or other orders for payment of money, or notes or other evidences of indebtedness issued in the name of the Association shall be signed or endorsed by any two Officers or Directors designated by resolution of the Board, and in the manner as specified by the Board of Directors; provided, however, that the signatures of at least two (2) persons who shall be members of the Board of Directors or one (1) member of the Board of Directors and one (1) officer who is not a member of the Board of Directors shall be required for the withdrawal of funds from the Association's reserve account.

- 11.3 Funds and Deposits. Any funds of the Association shall be deposited to the credit of the Association in such banks or other depositories as the Board of Directors shall, from time to time, determine.
- 11.4 Fiscal Year. The fiscal year of the Association shall be as determined by resolution of the Board of Directors.

ARTICLE 12 AMENDMENTS

These Bylaws may be amended by the affirmative vote or written consent of an Absolute Majority of the Members (that is, a majority of the Total Voting Power of the Association).

ARTICLE 13 MISCELLANEOUS

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

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