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Sunnyvale Homeowners  
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THIRD AMENDED and Restated

DECLARATION of Covenants, Conditions  
and Restrictions of Sunset Park  
of Sunnyvale Homeowners Association

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

**SUNSET PARK OF SUNNYVALE  
HOMEOWNERS ASSOCIATION**  
c/o BERDING & WEIL LLP  
3240 Stone Valley Road West  
Alamo, CA 94507  
(925) 838-2090

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**THIRD AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
SUNSET PARK OF SUNNYVALE HOMEOWNERS ASSOCIATION**

This Third Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by SUNSET PARK OF SUNNYVALE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (hereinafter referred to as the "Association").

**RECITALS**

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A. WHEREAS, the Association is the successor in interest to Cal-West Communities, Inc, a California corporation, which, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions, dated February 5, 1971, and recorded on February 11, 1971, in Book 9217, Pages 718 *et seq.*, as Document No. 3953252, in the Official Records of Santa Clara County, State of California (hereinafter referred to as the "1971 Declaration"); and

B. WHEREAS, a supplement to the 1971 Declaration was recorded on February 25, 1971, in Book 9231, Pages 354 through 361, *et seq.*, as Document No. 3959722, in the Official Records of Santa Clara County, State of California; and

C. WHEREAS, a supplement to the 1971 Declaration was recorded on March 17, 1971, in Book 9256, Pages 667 *et seq.*, as Document No. 3970949, in the Official Records of Santa Clara County, State of California; and

D. WHEREAS, a supplement to the 1971 Declaration was recorded on July 22, 1971, in Book 9430, Pages 75 *et seq.*, as Document No. 4055010, in the Official Records of Santa Clara County, State of California; and

E. WHEREAS, Amended and Restated Covenants, Conditions and Restrictions of Sunset Park of Sunnyvale Homeowners Association were recorded on July 16, 1984, in Book 1721, Pages 220 *et seq.*, as Document No. 8127381, in the Official Records of Santa Clara County, State of California; and

F. WHEREAS, Amended and Restated Covenants, Conditions and Restrictions of Sunset Park of Sunnyvale Homeowners Association were recorded on August 10, 1989, in Book L053, Pages 848 *et seq.*, as Document No. 10213070, in the Official Records of Santa Clara County, State of California (hereinafter referred to as the "1989 Amended and Restated Declaration"); and

G. WHEREAS, the 1971 Declaration, as amended and restated, establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property located in the County of Santa Clara, State of California, and more particularly described as follows:

All of the real property shown on the subdivision map entitled "Tract No. 4876, Sunset Park of Sunnyvale, Unit No. 1" recorded on November 17, 1970 in Book 275 of Maps at pages 31 and 32, in the Official Records of Santa Clara County, State of California, and

All of the real property shown on the subdivision map entitled "Tract No. 4925, Sunset Park of Sunnyvale, Unit No. 2" recorded on July 22, 1971 in Book 286 of Maps at pages 45 and 46, in the Official Records of Santa Clara County, State of California;

and

H. WHEREAS, the Members, constituting more than fifty percent (50%) of the Members of the Association, desire to amend, modify, and otherwise change the 1971 Declaration, as amended and restated;

I. NOW, THEREFORE, pursuant to Article XI, Section 11.05 of the 1989 Amended and Restated Declaration, the Members constituting more than fifty percent (50%) of the Members of the Association, do hereby declare that the aforesaid 1971 Declaration, as amended and restated, be and it is hereby, **AMENDED AND RESTATED IN ITS ENTIRETY** as set forth

in the within Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Sunset Park of Sunnyvale Homeowners Association; and

J. IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a Planned Development within the meaning of section 1351(k) of the California *Civil Code*; and

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

L. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in section 1354 of the California *Civil Code*, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

## **ARTICLE 1                      DEFINITIONS**

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- 1.1     Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.
- 1.2     Additional Charges. "Additional Charges" shall mean all reasonable costs, fees, charges, and expenditures, including without limitation, interest, late charges, reasonable attorneys' fees, recording and filing fees, and all other reasonable costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.
- 1.3     Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 6.5.

- 1.4 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.
- 1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.6 Association. "Association" shall mean Sunset Park of Sunnyvale Homeowners Association, its successors and assigns.
- 1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.8 Bylaws. "Bylaws" shall mean the Third 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.
- 1.9 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.
- 1.10 City. "City" shall mean the City of Sunnyvale.
- 1.11 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and Residents of the Development.
- 1.12 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.13 County. "County" shall mean the County of Santa Clara.
- 1.14 Declaration. "Declaration" shall mean this Third 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.

- 1.15 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.
- 1.16 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 6.8.
- 1.17 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Owners and Residents of a particular Lot. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Lot; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement herein granted.
- 1.18 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules, and the policies and resolutions duly adopted by the Board and distributed to the Members.
- 1.19 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.
- 1.20 Maintenance. "Maintenance" shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.
- 1.21 Member. "Member" shall mean an Owner.
- 1.22 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, 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, as more particularly set forth in the Bylaws.

- 1.23 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.
- 1.24 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as under a Mortgage.
- 1.25 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 having such interest merely as security for the performance of an obligation.
- 1.26 Party Wall. "Party Wall" shall have the meaning set forth in Section 2.8.
- 1.27 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 6.7.
- 1.28 Repair. "Repair" 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.
- 1.29 Replacement. "Replacement" shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.
- 1.30 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.
- 1.31 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 1.25 above.
- 1.32 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.

- 1.33 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.
- 1.34 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 6.6.
- 1.35 Subdivision Map. "Subdivision Map" or "Map" shall mean, collectively, (i) the subdivision map entitled "Tract No. 4876, Sunset Park of Sunnyvale, Unit No. 1" recorded on November 17, 1970 in Book 275 of Maps at pages 31 and 32, in the Official Records of Santa Clara County, State of California, and (ii) the subdivision map entitled "Tract No. 4925, Sunset Park of Sunnyvale, Unit No. 2" recorded on July 22, 1971 in Book 286 of Maps at pages 45 and 46, in the Official Records of Santa Clara County, State of California.
- 1.36 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 2                      PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT**

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- 2.1 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Lot shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.
- 2.2 Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Members of the Association, and their families, tenants, Resident Contract Purchasers, and guests as provided in the Governing Documents, and there shall be no use of the Common Area except by such persons.

2.3 Exclusive Use Common Area. Certain portions of the Common Area, referred to as "Exclusive Use Common Areas," are subject, as the servient tenements, to exclusive easements in favor of the Lots to which they are attached or assigned, as the dominant tenements, and such exclusive easements shall be appurtenant to those designated Lots. Exclusive Use Common Area shall include carports and storage lockers.

2.4 Owners Non-Exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development; provided, however, such non-exclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Lots over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

- (a) The right of the Board of Directors to establish and enforce reasonable rules and regulations governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
- (c) The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use the recreational facilities for any period during which any Assessment against such Owner's Lot remains unpaid and/or for infraction of the Governing Documents of the Association;
- (d) The right of the Board, subject to approval of the Members as set forth in Section 5.6, to construct capital improvements upon the Common Area;
- (e) The right of the Board, subject to approval of the Members as set forth in Section 5.7, to sell, transfer or dedicate property owned by the Association;
- (f) The right of the Board, subject to approval of the Members as set forth in Section 5.8, to mortgage, pledge,



encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association; and

- (g) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, Maintenance, Repair, or Replacement for the benefit of the Common Area or the Owners in common.

2.5 Delegation of Use. Any Owner may delegate his rights of use and enjoyment, including easements, in the Development to the members of his family, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon the leasing or renting of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot. Each Owner shall notify the Board (or its authorized agent) of the Association of the names of any tenants or any such Contract Purchasers of such Owner's Lot. Each Owner, tenant, or Contract Purchaser shall also notify the Board (or its authorized agent) of the Association of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner, tenant, or Contract Purchaser. Any rights of enjoyment delegated pursuant to this Section 2.5 are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.

2.6 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area. Notwithstanding the foregoing, an Owner may, strictly in accordance with the Rules, plant and maintain any plan or other vegetation upon the Common Area within an area contiguous with

such Owner's Lot which extends not more than two (2) feet into Common Area as measured from the boundary of such Owner's Lot or from a fence which encloses a patio appurtenant to such Owner's Lot. Any Owner who plants any plant or other vegetation within the Common Area as provided in this Section 2.6, shall be solely responsible for maintaining such plant or vegetation; provided, however, that if in the sole judgment of the Board any Owner fails to properly maintain any such plant or vegetation, the Board shall have the right to assume maintenance of such plant or vegetation which shall include the right to remove same.

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

2.8 Party Walls. The following provisions shall govern party walls:

2.8.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residences within the Development and placed on the dividing line between the Lots shall constitute a "Party Wall," and, to

the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

- 2.8.2 Sharing of Repair and Maintenance. The cost of reasonable maintenance and repair of a Party Wall shall be shared by the Owners who make use of the wall in proportion to such use.
- 2.8.3 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- 2.8.4 Weatherproofing. Notwithstanding any other provision of this Section 2.8, an Owner who by his or her negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 2.8.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section 2.8 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.
- 2.8.6 Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section 2.8, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision of a majority of the three arbitrators shall be binding.

### **ARTICLE 3                    EASEMENTS**

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- 3.1 Easements in General. In addition to all easements reserved and granted on the Subdivision Map and the easements provided in

Article 2, there are hereby specifically reserved and granted for the benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 3.

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

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

- 3.3 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded map or maps of the Development, and as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for those installations

maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Lots.

#### **ARTICLE 4                    USE RESTRICTIONS**

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4.1     Residential Use. Except as provided in Section 4.3, Residences shall be occupied and used for residential purposes only.

4.2     Rental of Residences. Subject to the provisions of the Governing Documents and this Section 4.2, an Owner shall have the right to lease his or her entire Residence, provided the Owner satisfies the following requirements:

- (a)     the Owner notifies the Board (or its authorized agent) of the names of all tenants and other occupants,
- (b)     there is a written lease which expressly provides that the lease is subject to the provisions of the Governing Documents and that the breach of any provision of the Governing Documents shall constitute a default under the lease, and
- (c)     the Owner timely provides the Board (or its authorized agent) with a copy of the signed lease.

4.2.1   Owner's Responsibility for Tenant's Actions. Each Owner leasing a Residence shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Lots and Common Area and for each tenant's compliance with the provisions of all Association Governing Documents. An Owner leasing or renting a Residence shall provide the tenant(s) with copies of the Governing Documents and all subsequent amendments.

4.2.2   Association's Enforcement Rights. In the event a tenant's conduct involves damage or misuse of any Common Area or facilities on any Common Area or constitutes an unreasonable nuisance to Residents, the Association shall be entitled to, but shall have no obligation to, maintain an

eviction action against such tenant to the same extent as the Owner of the Lot, the Association being deemed to be a third party beneficiary of any lease involving any Lot within the Development. The Association's right to maintain an eviction action shall arise only in the event that (i) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments as to why eviction by the Association is not necessary, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

**4.2.3 Indemnification of Association.** Every Owner of a Lot that is occupied by persons other than the Owner pursuant to a lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Lot upon the Development, including any such arising or alleged to have arisen out of the enforcement or non-enforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, including eviction as provided herein, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

**4.2.4 Transient Rentals Prohibited.** No Owner shall be permitted to lease his Residence for transient or hotel purposes, which shall include, but not be limited to, rental for any period less than thirty (30) days or any rental where the occupants of a Residence are provided customary hotel services such as room service for food and beverage, maid service, furnishing of laundry and linen, and bellboy services.

**4.3 Time-Share Arrangements.** No Lot or Lots shall be leased, subleased, occupied, rented, let, sublet, or used for or in

connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot or Lots in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Lot in the Development by any Owner or his or her or its social or familial guests

4.4 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except: (i) such professional and administrative professions as may be permitted by applicable governmental ordinances and in any Rule adopted by the Board, and provided that there shall be no external evidence thereof, and (ii) such other businesses to the extent specifically authorized by statute, including family day care centers as specifically authorized by California *Health and Safety Code* section 1597.40, and community care facilities as specifically authorized by California *Health and Safety Code* section 1502. The Board shall have the right to adopt and enforce Rules which are not inconsistent with the provisions of this Section 4.4 and which are based on objective standards related to the impact of business activities on the Development and its Residents, and which provide clarification as to the restrictions and regulations to which business activities within the Development are subject.

4.5 Offensive Conduct, Nuisances, Noise. No noxious, harmful, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Lot, which would unreasonably

disturb another Resident's enjoyment of his or her Lot or of the Common Area. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot and Residence.

- 4.6 Use of Common Area. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed, placed, kept, stored, parked, planted on, or removed from the Common Area without the prior written consent of the Board; and the Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area.
- 4.7 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board.
- 4.8 Requirement of Architectural Approval. As addressed in greater detail in Article 9, construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to approval of the Board.
- 4.9 Sports Apparatus. No fixed basketball standards or other fixed sports apparatus (*e.g.*, for soccer or hockey) shall be placed upon or attached to any part of the Development, including without limitation, any Lot, except that portable basketball standards and other portable sports apparatus shall be permitted on patio areas appurtenant to any Lots, provided such equipment is not visible over the fence surrounding the patio area or from any neighboring property (including Lots or Common Area), sidewalk or street and further provided that it is stored away at night and when not in use. Notwithstanding anything to the contrary set forth in this Section 4.9, the introduction and use of portable sports apparatuses and equipment shall be permitted on the Common



Area strictly to the extent that such use may be explicitly permitted under the Rules.

- 4.10 Mailboxes and Exterior Newspaper Tubes. The Association maintains the mailbox kiosks that are located at various locations throughout the Development, which are provided for the benefit of the Owners of the Development. Individual Owners are responsible for the key to their respective mailboxes located in the mailbox kiosk. Accordingly, there shall be no free-standing exterior mailboxes or newspaper tubes on any Lot.
- 4.11 Outside Drying and Laundering. Outside clotheslines and other outside clothes washing, drying or airing facilities shall be permitted only within the patio area of each Lot and only to the extent they are not visible over the fence surrounding the patio area from any neighboring property including both Lots and Common Area and sidewalks and streets.
- 4.12 Antennas. No outside mast, tower, pole, antenna, or satellite dish shall be erected, constructed, or maintained on the Common Area including the outside of any Lot, except (i) those erected, constructed, or maintained by the Association, (ii) those expressly approved by the Board, (iii) those initially installed during the original construction of the buildings located in the Development, or (iv) those antennas or satellite dishes which, by law, cannot be prohibited by the Association. Subject to restrictions established by law, the Board may adopt Rules regarding the installation and maintenance of antennas and satellite dishes.
- 4.13 Animals. Domestic dogs, cats, birds and other customary household pets may be kept in reasonable numbers and size, subject to the Rules and any applicable local ordinance. While in Common Areas each dog must be restrained on a leash held by a responsible person capable of controlling it.
- 4.13.1 Limitation on Pets. No dogs, cats, birds, or other animals of any kind shall be kept, maintained, raised, or bred for commercial purposes in any Lot or elsewhere within the Development. No livestock or poultry of any kind shall be kept, maintained, raised or bred in any Lot or elsewhere within the Development.

4.13.2 Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her family, tenants, guests, or invitees. The Owner shall indemnify the Association and its officers, directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her family, guests, tenants, or invitees.

4.13.3 Board Authority; Pet Rules. The Board shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person. The Board may adopt and enforce Pet Rules in addition to the provisions of this Section 4.13.

4.14 Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in dumpsters designated and maintained by the Association and located in central pick-up points in the Development. The Association shall be responsible for causing removal of garbage from the central pick-up points on a regular basis. No other exterior individual trash containers or receptacles shall be permitted without prior Board approval or unless permitted by the Rules.

4.15 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage of building materials other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container.

4.16 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be maintained or

operated upon a Lot except as is customary and necessary in connection with approved construction.

4.17 Signs. No sign of any kind shall be displayed to the public view from any portion of the Development except that this limitation shall not apply to:

- (a) Signs required by legal proceedings;
- (b) Signs which by law cannot be prohibited;
- (c) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and Rules and reasonably located on a Lot advertising a Lot for sale or rent;
- (d) A single identification sign, which has been approved by the Board or complies with the Rules, located on a Lot identifying the number or address of the Lot and/or the names of the occupants;
- (e) Signs approved by the Association located at or near any entrance to the Development identifying the Development;
- (f) Signs required for traffic control and regulation of streets or open areas within the Development; and
- (g) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association.

4.18 Vehicles and Parking. Only vehicles which are current in their registration and licensing can be parked within the Development. Vehicles of Residents shall not be parked anywhere in the Development except wholly within the owner's assigned carport or in an unassigned parking space. No trailer, mobile home, recreational vehicle, boat, golf cart or similar equipment, and no truck, van or SUV other than one which is less than twenty (20) feet in length, and no dilapidated, inoperable, or abandoned vehicle shall be parked, kept, stored, or permitted to remain upon any area within the Development, other than temporarily in accordance with the Rules.

4.18.1 Carpports. One carport parking space shall be assigned by the Board for the exclusive use of the Owner of each Lot and such carport parking space shall be located as near and as convenient as to the Owner's Lot as is reasonably practicable. Residents are required to use their carports to parking capacity before parking in unassigned parking spaces. One automobile and one motorcycle may be parked in a carport parking space as long as both are wholly within the marked boundaries of the parking space in which they are parked. Carports shall be kept sufficiently clear so as to permit the parking of at least one motor vehicle. Each Owner and Resident shall keep his or her carport in a neat, orderly and sanitary condition. If a Resident Lot Owner or the resident tenant of a non-Resident Lot Owner does not possess a motor vehicle and does not use his or her carport, such Lot Owner may lease or rent out his or her carport, but only to another Resident of the Development who does not have the right of occupancy of the Residence of such Owner.

4.18.2 Unassigned Parking Spaces. Unassigned parking spaces are available to Residents and their guests for the parking of motor vehicles on an as available basis (*i.e.*, on a "first come, first served basis"). Residents are required to use their carports to parking capacity before parking in an unassigned parking space. The Residents of each Lot are limited to the parking of one (1) motor vehicle in the unassigned parking area at any given time. In the event any Member(s) own(s) more than one (1) Lot, residing on one and renting or leasing the other, and such Member(s) park a motor vehicle in each of two parking spaces in the unassigned parking area, the tenant(s) of such Member(s) shall not park any vehicle in the unassigned parking area. For purposes of this Article 4, a motorcycle, scooter, moped, or other similar machine used for travel is deemed to be a motor vehicle.

4.18.3 Overhaul, Repair or Maintenance. Except as otherwise permitted by the Rules, no overhaul, repair or maintenance work on any motor vehicle, boat, trailer or other vehicle shall be permitted upon any portion of the Development, except briefly to the extent necessary to enable movement thereof to a proper repair facility.

4.18.4 Noisy Vehicles; Emissions. No unreasonably noisy vehicle as determined by the Board and no vehicle emitting foul smelling or offensive exhaust fumes as determined by the Board shall be operated within the Development.

4.19 Parking Enforcement. In addition to the provisions of Section 4.18 above, the Board shall have the power and authority to adopt, promulgate, and enforce parking rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Development shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Lot Owner responsible or whose household members, tenants, Contract Purchasers, or guests are responsible for the presence of such vehicle.

4.20 Window Coverings. In no event shall window coverings installed in the windows of any Residence be of any light-reflective material such as foil, whether aluminum or otherwise and all window coverings shall be maintained by the owner of the Residence in good and attractive condition and repair and shall comply with any rules adopted by the Board. A violation of this provision is a violation of the governing documents, and thus the Board can require or cause the removal of non-conforming window coverings including those which deteriorated so that they are no longer in a reasonably good and attractive condition.

4.21 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building (each of which is referred to hereinafter as an "outbuilding") of any kind shall be located within the Development, except as may be explicitly provided by Rule and provided that any approved outbuilding shall be in strict compliance with the provisions of this Declaration, including Article 9 concerning approval by the Board. Notwithstanding the foregoing restriction, an nonconforming outbuilding which existed on a Lot on January 1, 1991 shall not be deemed to be a violation of this Section 4.21,

subject to the condition that when any such existing nonconforming outbuilding is removed from such Lot or when it reaches a condition in which it is no longer susceptible for use as a storage facility, it shall not be replaced with any other nonconforming or unapproved outbuilding. The Board shall have the authority to provide, by Rule, for the placement on Lots within the Development of outbuildings which are manufactured with particular synthetic materials including, by way of example only, materials which are currently marketed under the name "Rubbermaid" or similar materials. In no event shall any outbuilding be used as a residence or for residential purposes, either temporarily or permanently.

- 4.22 Subdivision or Merger of Lots. No Lot may be subdivided for any reason other than to combine the portions of such divided Lot with an adjacent Lot or Lots for the purpose of creating a larger parcel to serve as the site for a single Residence. Any such divided Lot shall be tied by covenant or merged with the Lot or Lots to which it is being combined. In addition, two or more Lots may be combined for the purpose of creating a larger parcel to serve as the site for a single Residence. An irrevocable covenant to hold as one parcel shall be recorded against any merged or combined Lots at the time of such combination or merger. Such combination or merger shall not reduce the number of Lots as defined in and for purposes of this Declaration and the Assessments and voting rights attributable to the divided, combined, or merged lots shall be allocated to the Owner(s) thereof.
- 4.23 Destructive Vegetation. Under no circumstances shall plants and other vegetation which, in the sole judgment of the Board are destructive, be permitted to grow on or cling to any fence or any other structure within the Development. The Board shall have the right to require or cause the removal of any plants which fail to comply with the provisions of this Section 4.23 or which have caused any damage to any property within the Development. The Owner who is responsible for the installation of any vegetation which has caused damage to property shall be responsible for the cost of repair of such damage.
- 4.24 Mineral Exploration. No Lot shall be used to explore for or to remove any water, oil, hydrocarbons, or minerals of any kind without the approval of the Board, and only if permitted by local ordinance.

- 5.1 Management and Operation. The Association shall manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California 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.
- 5.2 Membership. Every Owner of a Lot within the Development shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.
- 5.3 Voting. Only Members in Good Standing shall be entitled to vote, and only one vote shall be cast for each Lot, as more particularly set forth in the Bylaws.
- 5.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.
- 5.5 Association Rules. The Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. A violation of any Rule shall constitute a violation of this Declaration and shall be subject to any and all remedies set forth in this Declaration including Article 10.

- 5.6 Capital Improvements; Association Saunas. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year, expenditures for new capital improvements (as distinguished from the reconstruction or Replacement of an existing capital improvement) shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of an Absolute Majority of the Members. Further, Repair, Replacement or removal of the saunas located in the Association's clubhouse or community building, which are non-functioning as of the date of the recording of this Third Amended and Restated Declaration shall also require the approval of two-thirds of the Total Voting Power as more particularly described in Section 8.1.1 B. of this Third Amended and Restated Declaration.
- 5.7 Sale or Transfer of Association Property. The Board of Directors shall not in any fiscal year sell or transfer property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of an Absolute Majority of the Members.
- 5.8 Mortgage of Association Common Area. Upon approval of a Simple Majority of the Members, the Board acting on behalf of the Association shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association.
- 5.9 Access. The Board and its duly authorized agents or representatives shall have the right, after reasonable notice to the Owner thereof, to enter any Lot for the purpose of performing any Maintenance, Repair or Replacement authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities.

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## **ARTICLE 6                      ASSESSMENTS AND LIENS**

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- 6.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to



pay to the Association: (i) Annual Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for. Each Assessment levied by the Association under this Article 6, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Lot within the Development shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is record Owner of such Lot. After an Owner transfers of record any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Santa Clara County.

- 6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and

by law. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

6.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Development or of the affairs of the Association, or the benefit of the Lot Owners, or for the enforcement of the Governing Documents.

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

6.5 Annual Assessment.

6.5.1 Calculation of Estimated Requirement. Not later than forty-five (45) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis; to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration.

6.5.2 Allocation of Annual Assessment. The Board shall allocate and assess the amount of estimated required funds equally

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

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

6.5.4 Increases in Annual Assessment. Except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

## 6.6 Special Assessments.

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

- 6.6.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.
- 6.6.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.
- 6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Lot into compliance. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.
- 6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.
- 6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that

fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

- 6.10 Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.
- 6.11 Delinquent Assessments. Any installment or other portion of an Assessment not received by the Association (or its authorized agent) within fifteen (15) days after its due date shall be delinquent and shall be subject to interest at an annual interest rate not to exceed twelve percent (12%) and a late charge not to exceed ten percent (10%) or ten dollars (\$10.00), whichever is greater, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except that any Enforcement Assessment shall not be enforced through nonjudicial foreclosure procedures. No procedures shall be initiated to foreclose this lien securing any Assessment levied under this Article 6 until after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment pursuant to *Civil Code* section 1367.1 or other applicable statute. The Notice of Delinquent Assessment shall conform to the requirements of *Civil Code* section 1367.1(d) and shall be mailed in the manner set forth in *Civil Code* section 2924b to all record owners of the Lot no later than ten (10) days after recordation as required by *Civil Code* section 1367.1. At least thirty (30) days prior to the recording of a Notice of Delinquent Assessment, the Association shall provide to the Owner, by certified mail, the notices required by *Civil Code* section 1367.1(a) or other applicable statute. Except as prohibited by

law, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.

- 6.12 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the *Civil Code* of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision.
- 6.13 Certificate of Satisfaction and Release of Lien. Within twenty-one (21) days of the payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien and shall provide the Owner(s) with a copy of the certificate.
- 6.14 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 6 shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

- 6.15 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated SUNSET PARK OF SUNNYVALE HOMEOWNERS ASSOCIATION OPERATING ACCOUNT and SUNSET PARK OF SUNNYVALE HOMEOWNERS ASSOCIATION RESERVE ACCOUNT. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used for the purposes set forth in Section 6.3. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.
- 6.16 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 6, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 6.
- 6.17 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:
- (a) All property dedicated to and accepted by the City or the County or other local public authority and devoted to public use;
  - (b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Association is record owner of such Lot; and
  - (c) All Common Area.

**ARTICLE 7****DAMAGE OR DESTRUCTION  
OF BUILDINGS; CONDEMNATION**

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- 7.1 Replacement or Repair of Association Property. In the event of damage to or destruction of the Common Area or other property of the Association or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of the Association as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. The Members may elect not to cause such replacement or repair by the vote or written consent of two-thirds of the total voting power of the Association. If there is an election not to rebuild or repair, the applicable insurance proceeds shall be distributed by the Association to the Members pro rata or otherwise made use of as determined by the vote of the Members.
- 7.2 Rebuilding or Repair of Improvements on Lots Where Insurance is Not Maintained by the Association. If any Lot is damaged or destroyed by fire or other casualty not covered by insurance maintained by the Association, the Owner(s) of any such Lot shall repair or rebuild the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Board. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction.
- 7.3 Rebuilding or Repair of Improvements on Lots Where Insurance is Maintained by the Association.
- 7.3.1 Damage to a Single Lot. If a single Lot is damaged or destroyed by fire or other casualty, and insurance coverage is maintained by the Association, the available insurance proceeds shall be paid to the Owner or Owners of such Lot, or the Mortgagee thereof, as their respective interests appear, and such Owner(s) or Mortgagee shall use the same to rebuild or Repair such Lot to its condition prior to the damage or destruction, or to such other



condition as shall have been approved in advance by the Board. In the event the insurance proceeds are insufficient to complete such work, the Lot Owner(s) shall pay such additional sums as may be necessary to complete such rebuilding and repair. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction.

7.3.2 Damage to Two or More Lots. If two or more Lots are damaged or destroyed by fire or other casualty, and insurance coverage is maintained by the Association, the amount of available insurance proceeds shall be paid to the Association, and the Board shall thereupon contract to repair or rebuild the damaged portions of the Lots to their condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Board. In the event the insurance proceeds are insufficient to pay all of the costs of repair and or rebuilding, the Board shall levy a Special Assessment pursuant to Section 6.6 hereof which shall be assessed against all Lot Owners for any repair or rebuilding of a feature which is within the Association's maintenance responsibility and against only the Owner(s) of the affected Lot(s) with respect to all other features.

7.4 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

7.5 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a residence, is

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

## **ARTICLE 8                      MAINTENANCE OF PROPERTY**

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### **8.1            Association Responsibility.**

#### **8.1.1        Common Area Maintenance.**

A.            The Association shall provide Maintenance, Repair, and Replacement of the Common Area and all facilities, improvements, and landscaping thereon, including, without limitation, the following: (i) swimming pool, (ii) clubhouse or community building, (iii) driveways, (iv) unassigned parking spaces, (v) utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies), (vi) assigned carport parking spaces, except that it shall be each Owner's responsibility, as provided in Subsection 8.4.2, to keep his or her assigned carport parking space in a neat, orderly, and sanitary condition, (vii) fencing, and (viii) all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and good Repair.

B.            Notwithstanding the provisions set forth in paragraph A of this subsection 8.1.1, the Association shall not be obligated to Repair, Replace or remove the non-functioning saunas, and shall continue to keep such saunas closed unless and until (i) the Board determines that it is in the Association's best interest to Repair, Replace or remove the saunas, and (ii) an Absolute Majority of the Total Voting Power of the Association has

approved the Repair, Replacement or removal of the saunas, and the Association either has sufficient funds on hand to Repair, Replace or remove the saunas, or the requisite number of Members, under Section 6.6, shall have approved a Special Assessment to fund the Replacement.

C. Notwithstanding anything contained in this Subsection 8.1.1, the Association shall not be responsible for Maintenance, Repair, or Replacement of other portions of the Common Area (*for example*, cleaning of carports or storage lockers) to the extent the responsibility therefor is expressly assigned to one or more Owners, as set forth in this Article 8.

D. The Association shall further be responsible for providing lighting, landscaping, gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants upon the Common Area), and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the Maintenance of the Common Area in good condition and Repair, including painting of the exterior surfaces of the building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary.

8.1.2 Maintenance of Lots. With respect to any Lot and the improvements thereon, the Association shall be responsible for only the following: (i) Maintenance, Repair and Replacement of the siding (including the painting of the exterior surfaces of Residences); (ii) Maintenance, Repair and Replacement of roof covers, roof structures, gutters and downspouts of Residences, excluding therefrom gutters or downspouts installed by Residents or Owners, the Maintenance, Repair and Replacement of which shall be the responsibility of the Owner of such Residence, (iii) Maintenance and Repair of all fencing (including the painting thereof) and all gates and associated hardware, (iv) painting only of the exterior entry door to the Residence and only during the periodic painting by the Association at such times as shall be determined by the Board; and any painting of the exterior

entry door of a Residence as may be needed at any other time, including at such time as the Owner repairs or replaces the door, shall be the responsibility of the Owner of the Residence and, further, at no time shall the Association be responsible for re-staining any exterior entry door to a Residence once such door has been stained by an Owner, (v) painting only of the exteriors of balconies and only during the periodic painting by the Association at such times as shall be determined by the Board; and any painting of the exterior surface of the balconies as may be needed at any other time shall be the responsibility of the Owner, (vi) painting only of the exterior surfaces of storage lockers and only during the periodic painting by the Association at such times as shall be determined by the Board; and any painting of the exterior surface of any storage locker as may be needed at any other time shall be the responsibility of the Owner and, further, in the event of damage to a storage locker which is caused by an Owner or for which an Owner is otherwise responsible, the Association shall repair the storage locker and charge the cost of such repair to such Owner, but the responsibility for painting the storage locker after the completion of such repairs shall be solely that of the Owner.

8.2 Authority for Entry. The Association or its agents may enter any Lot or any portion of the Common Area which has been designated or assigned for the exclusive use of the Residents of a particular Lot (*for example*, carports), whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any Maintenance, Repair, or Replacement for which the Association is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

8.3 Association Liability; Consequential Damage.

A. Except as specifically provided in Section 8.1.2, the Association shall not be responsible or liable for any Maintenance, Repair, or Replacement of a Lot or any improvement thereon, or any portion of the Common Area which has been designated or

assigned for the exclusive use of the Residents of a particular Lot (*for example*, the cleaning of carports), except to the extent that the need for such Maintenance, Repair, or Replacement results from the gross negligence or fault of the Association, its employees, contractors, or agents.

B. Further, except as otherwise specifically provided in Article 7 entitled "Damage or Destruction of Buildings; Condemnation," the Association shall not be responsible for consequential damage to any portion of an Owner's Residence, or any fixtures or personal property located therein, even if the cause of the damage is from Common Area or components located on Lots maintained by the Association, unless and to the extent any such damage is covered by insurance carried by the Association. As an example (and not by limitation), water damage to the interior of a Residence that is caused by a leak in the roof of the Residence is the responsibility of the Owner, even though the Maintenance, Repair and Replacement of such roof is the responsibility of the Association.

#### 8.4 Owner Responsibility.

8.4.1 Maintenance of Lots and Exclusive Use Common Area. Except to the extent that Maintenance, Repair or Replacement of any improvement on a Lot is expressly and clearly made the responsibility of the Association under this Article 8, each Owner shall be responsible for maintenance, Repair and Replacement of his or her Lot and any Exclusive Use Common Area appurtenant to such Lot and all improvements thereon including the Residence and including the following, (i) Maintenance, Repair and Replacement of fireplace flues, chutes and chimneys, (ii) Maintenance, Repair and Replacement of skylights, (iii) Maintenance, Repair and Replacement of decks, patios and balconies (but not the painting the exterior surfaces of balconies to the extent the responsibility has been assigned to the Association in subsection 8.1.2 of this Article 8), (iv) Maintenance, Repair and Replacement of air conditioning and heating equipment which serves an Owner's Residence even though such equipment may extend from the Residence into Common Area air space, (v) Maintenance, Repair and Replacement of solar devices, (vi) Maintenance, Repair and Replacement of all glass

surfaces, (vii) Maintenance, Repair and Replacement of window frames and screens and associated hardware, (viii) Maintenance, Repair and Replacement of exterior doors, sliding glass doors, screen doors and their frames (but not the painting of the exterior entry door to the Residence to the extent responsibility therefor has been assigned to the Association under subsection 8.1.2 of this Article 8), (ix) Maintenance, Repair and Replacement of storage lockers (but not the painting of the exterior surface thereof to the extent such responsibility has been assigned to the Association under subsection 8.1.2 of this Article 8), (x) Maintenance of walkways and Repair of cracks or subsidence in walkways, and (xi) Maintenance, Repair and Replacement of trees, shrubs and other landscaping in yards, including patio areas which are appurtenant to or adjacent to an Owner's Lot. The Owner shall also have the improvements on the Owner's Lot periodically inspected for the presence of wood-destroying pests or organisms, and if present, take the necessary steps to eliminate such pests or organisms. The Owner shall further be responsible for any restoration, painting, Repair or Replacement occasioned by the presence of wood-destroying pests or organisms.

8.4.2 Common Area. Each Owner shall further be responsible for Owner keeping his or her assigned parking space (*i.e.*, carport) in a neat, orderly and sanitary condition.

8.4.3 Compliance With Architectural Provisions. An Owner's right and responsibility for Maintenance, Repair or Replacement of any portions of his or her Lot, or Common Area which has been designated or assigned for the exclusive use of the Residents of a particular Lot, shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 9.

8.5 Pest Inspection. The Board shall have the authority and power to determine if and when pest extermination is necessary in any Residence or building or within the Development or upon any Lot. The Board has the further authority to cause any building, Residence, Garage, or other improvement upon a Lot to be tented and to require the Residents thereof to temporarily vacate the

premises. Any costs incurred for extermination services rendered with respect to any building, Residence or other improvement upon a Lot shall be borne by the Owner of that Lot. If it is necessary for an entire building to be tented, the costs incurred therefor shall be divided equally among the individual Owners within the building. Any actions taken by the Board pursuant to this Section 8.5 shall be taken in compliance with the provisions of section 1364 of the California *Civil Code* and any amendment or successor statute thereto.

**8.6 Board Discretion; Maintenance Schedule.**

A. The Board shall have the absolute discretion to determine whether any Maintenance, Repair, or Replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Development or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

B. As to any Maintenance, Repair or Replacement which is the responsibility of the Association, the Board shall, in its sole discretion, determine when such Maintenance, Repair or Replacement are needed, and the type and quality of the Maintenance, Repair and Replacement that will be done. Furthermore, the Board in its sole discretion may establish schedules for the performance of any Maintenance, Repair or Replacement, based on, among other things, available funds.

**8.7 Owner Liability.** In the event the need for any maintenance, repair, or replacement is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenants, Contract Purchaser, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

- 9.1 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the Association, no building, fence, wall, hedge or other similar barriers (whether of living or inert materials), gate, obstruction, balcony, deck, screen, patio, patio cover, tent, awning, window air conditioning units, poles, standards, banners, flags (except for the American flag in compliance with California *Government Code* section 434.5), carport cover, or other improvement or structure of any kind shall be commenced, erected, painted, stained or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Board as to quality of workmanship and design, harmony of external design and location in relation to surrounding structures, topography, and finished grade elevation.
- 9.2 Rules. The Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Said Rules shall interpret and implement the provisions of this Article 9 by setting forth the standards and procedures for Board review and guidelines for architectural design, placement of buildings and other structures, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, that said Architectural Rules shall not be in derogation of the minimum standards required by this Declaration.
- 9.3 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article 9, shall apply for approval by notifying the Board, in writing, of the nature of the proposed work and furnishing such information and documentation as the Board may require. The Board shall consider each application not later than the second regular Board meeting after the date of submission to the Association of a complete application.
- 9.4 Grant of Approval. The Board shall grant the requested approval only if:



- (a) The Owner shall have complied with the provisions of Section 9.1 above;
- (b) The Board shall find that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Board; and
- (c) The Board shall determine that the proposed improvements would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations.

9.5 Form of Approval. All approvals and rejections of requests for approval shall be in writing; provided, however, that any request for approval which has not been acted upon within sixty (60) days from the date of the Board meeting at which the Board first considers the request shall be deemed approved.

9.6 Commencement. Upon receipt of approval pursuant to Section 9.5 above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations, and excavations pursuant to said approval, said commencement to occur, in all cases, within ninety (90) days from the date of such approval. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

9.7 Completion. The Owner shall, in any event, complete the construction, reconstruction, refinishing, or alteration of any such improvement within one (1) year after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other

supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section 9.7 , the Board shall proceed in accordance with the provisions of Section 9.8, below, as though the failure to complete the improvements was a non-compliance with approved plans.

**9.8** Inspection. Inspection of work and correction of defects therein shall proceed as follows:

- (a) Upon the completion of any construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article 9, the Owner shall give written notice thereof to the Board.
- (b) Within sixty (60) days thereafter, the Board, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Board finds that such construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.
- (c) If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after the expiration of the 30-day remediation period. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner and, in the discretion of the Board, to any other interested party.
- (d) At the hearing the Owner and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall

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

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

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

9.10 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an estoppel certificate, certifying (with respect to the Owner's Lot) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner comply with this Declaration, or (ii) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Lot through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

- 9.11 Liability. Neither the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 9.10, whether or not the facts therein are correct; provided, however, that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or him. Without in any way limiting the generality of the foregoing, the Board or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Board.
- 9.12 Compliance With Governmental Requirements. The application to the Association and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner.

## **ARTICLE 10                    ENFORCEMENT**

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- 10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its Officers or Board of Directors or by any Owner; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.
- 10.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to

be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

- 10.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her family and his or her tenants, contract purchasers, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.
- 10.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.
- 10.5 Rights and Remedies of the Association.
- 10.5.1 Rights Cumulative. The Association, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.
- 10.5.2 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Third Amended and Restated Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the family of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its

Officers or Board of Directors, or by any Owner or by their respective successors in interest.

10.5.3 Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's family, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Third Amended and Restated Declaration. The provisions of this Subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

10.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.

10.7 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Development or any portion thereof, (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents

may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request therefor shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

- 10.8 Alternative Dispute Resolution. As to any dispute between the Association and any Member or between two or more Members of the Association which is subject to California *Civil Code* section 1354(b), the parties shall abide by the alternative dispute resolution procedures as provided in *Civil Code* section 1354, or successor statute; provided, however, that all disputes which arise concerning Party Walls, or under the provisions of Section 2.8 shall be submitted to and decided by binding arbitration in accordance with Section 2.8 of this Declaration.
- 10.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.
- 10.10 Notices. Any notices required or given under this Article 10 shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected

Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

- 10.11 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her family or his or her tenants, Contract Purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorney's fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. In awarding attorneys fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorney's fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs and attorney's fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in Article 6 of this Third Amended and Restated Declaration.

## **ARTICLE 11            AMENDMENT**

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This Declaration may be amended by the affirmative vote or written consent of Members representing at least an Absolute Majority of the Members (that is, a majority of the Total Voting Power of the Association). Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the Santa Clara County Recorder.

## **ARTICLE 12            GENERAL PROVISIONS**

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- 12.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 12.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity



or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

- 12.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.
- 12.4 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 12.5 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.
- 12.6 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.
- 12.7 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six months prior to the expiration of the initial thirty (30) year term or any ten (10) year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Santa Clara County, California.

IN WITNESS WHEREOF, we, the Members of SUNSET PARK OF SUNNYVALE HOMEOWNERS ASSOCIATION, constituting more than fifty (50%)