
RESTATED BYLAWS

OF

THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION

ARTICLE 1 NAME AND LOCATION

The name of the corporation is THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION (the "Association"). The principal office of the Association shall be located in Santa Clara County, California or at such other place reasonably convenient to the Project as the Board of Directors may from time to time establish.

ARTICLE 2 DEFINITIONS

2.1 Declaration. "Declaration" means the First Restated Declaration of Covenants, Conditions and Restrictions for the Gardens - Sunnyvale, Recorded on _____, 19__, in Book _____, Page _____, in the Official Records of Santa Clara County, California, and any amendments thereof.

2.2 Other Definitions Incorporated by Reference. The terms defined in the Declaration shall have the same meaning when used herein unless the context clearly indicates a contrary intention.

ARTICLE 3 MEMBERSHIP AND VOTING

3.1 Membership. Membership in the Association shall include, and shall be limited to, all Owners of any Unit located within the Project. Membership shall be appurtenant to and may not be separated from ownership of a Unit. Upon becoming the Owner of a Unit, each Owner shall automatically be a Member of the Association and shall remain a Member until such time as his or her Unit ownership ceases for any reason. Membership in the Association shall not be transferred, encumbered, pledged, alienated, or hypothecated in any way, except upon the transfer or encumbrance of the Unit to which it is appurtenant and then only to the transferee or mortgagee, as the case may be, of such Unit. Any attempt to make a prohibited transfer is void. Upon any transfer of title to a Unit including a transfer upon the death of an Owner, Membership in the Association shall pass automatically to the transferee.

3.2 Voting. Members in Good Standing shall be entitled to cast one (1) vote for each Unit owned. In the event more than one (1) person owns a given Unit, the vote for such Unit shall be exercised as the Owners among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Unit. If the joint Owners of a Unit are unable to agree among themselves as to how their vote or votes are to be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent

of the other Owners of that Unit. The vote at any meeting of Members may be by voice vote or by ballot.

3.3 Delegation of Membership Rights. A Member who has sold his Unit to a Contract Purchaser shall be entitled to delegate to such Contract Purchaser his or her rights and privileges of membership in the Association and shall be deemed to have delegated to a Contract Purchaser who has assumed occupancy of the Member's Unit all rights of use and enjoyment of the Common Area. No delegation of any membership rights or privileges to a non-resident Contract Purchaser shall be binding, however, until the Board of Directors has been notified thereof in writing. Notwithstanding any delegation, until fee title to the Unit has been transferred of record, a Contract Seller shall remain liable for all assessments, fines, and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of his or her Unit. Any Member who has leased or rented his or her Unit to another person or persons shall in all events be deemed to have delegated to his or her tenants all rights of use and enjoyment of the Common Area. It is the express purpose and intent of the provisions of this section to limit the right of use and enjoyment of the Common Area to Residents of the Project and their guests.

3.4 Record Dates. The record dates for notice of meetings of Members and voting shall be determined as follows:

- (a) The Board of Directors may fix a time not more than ninety (90) days and not less than ten (10) days preceding the date of any meeting of the Members as a record date for determining the Members entitled to notice of any such meeting. If the Board sets a record date, only those persons or entities identified as Members in the records of the Association on the date so fixed shall be entitled to notice of such meeting. In the event no such record date is fixed by the Board of Directors, the record date for the determination of Members entitled to notice of any meeting shall be the thirtieth (30th) day preceding the date of the meeting as of 8:00 a.m. on such day.
- (b) The Board of Directors may fix a time not more than sixty (60) days preceding the date of any meeting of the Members as a record date for determining the Members entitled to vote at any such meeting. If the Board sets a record date, only Members in Good Standing as of the record date shall be entitled to vote at such meeting. In the event no such record date is fixed by the Board of Directors, the record date for the determination of Members entitled to vote at any meeting shall be the thirtieth (30th) day preceding the date of the meeting as of 8:00 a.m. on such day.

ARTICLE 4 MEETINGS OF MEMBERS

4.1 Annual Meeting. The Annual Meeting of the Members shall be held during the month of November of each year, on a date and at a time and place to be designated by the Board of Directors, upon proper written notice to all of the Members.

4.2 Special Meetings. Special Meetings of the Members may be called at any time by the President or by the Board of Directors or pursuant to the written request of Members entitled to cast at least five percent (5%) of the Total Voting Power of the Membership.

4.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by or at the direction of the Secretary or other person authorized to call a meeting. Written notice shall

be mailed first class, postage prepaid, or otherwise delivered at least ten (10) but not more than ninety (90) days before such meeting, to each Member entitled to vote at such meeting, except that in the case of a special meeting called pursuant to a written request of Members, notice of such special meeting shall be mailed or otherwise delivered within twenty (20) days after receipt of such written request by the Board, and the date of such special meeting shall be set by the Board and shall be not sooner than thirty-five (35) days nor later than ninety (90) days after the date of the Board's receipt of such written request. Notice of meetings shall be addressed or otherwise delivered to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Notice of any meeting of Members shall specify the date, hour, and place of the meeting, and the general nature of those matters which the Board intends to present for action by the Members. With respect to special meetings, only those matters referred to in such notice may be transacted. With respect to regular meetings, and notwithstanding the foregoing, any proper matter may be presented at the meeting for action by the Members, except that if the meeting is actually attended, in person or by proxy, by less than one-third (1/3) of the Total Voting Power of the Association, the Members can act only on matters the general nature of which has been set forth in the notice of such meeting.

4.4 Conduct of Meetings. All meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. A reasonable time limit for all Members to speak at a meeting of the Members shall be established by the Board of Directors.

4.5 Place of Meetings. Annual and special meetings shall be held at a location within the Project. However, the Board may, in its discretion, designate by resolution a convenient place located as close as reasonably practicable to the Project.

4.6 Quorum. The presence at any meeting, in person or by proxy, of Members entitled to cast at least a majority of the Total Voting Power shall constitute a quorum for the transaction of any business, except as otherwise provided in the Governing Documents. If, however, such quorum shall not be present or represented at any meeting, the Members otherwise entitled to vote at that meeting shall have power to adjourn the meeting from time to time, to be reconvened at a time not more than forty-five (45) days from the date of the adjourned meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. In the absence of a quorum, no business other than adjournment may be transacted. At the continuation of any meeting so adjourned, the Members present in person or by proxy shall constitute a quorum.

4.7 Proxies. At all meetings of the Members, each Member may vote in person or by proxy. All proxies shall be in writing and shall be filed with the Secretary. Any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it or a duly-executed proxy bearing a later date is filed with the Secretary of the Association; except that no proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specified therein the length of time for which such proxy is to continue in force, which in no case shall exceed three (3) years from the date of its execution. A proxy shall automatically cease upon conveyance by the Member of his or her Unit.

4.8 Form of Proxy. A proxy covering any of the following matters shall not be valid unless it sets forth the general nature of the matter to be voted on:

- (a) removal of any or all directors pursuant to California Corporations Code Section 7222;

- (b) filling a vacancy on the Board created by the removal of a director or to fill a vacancy not filled by the directors pursuant to California Corporations Code Section 7224;
- (c) voting on a transaction involving an interested director pursuant to California Corporations Code Section 7233;
- (d) amending the Articles of Incorporation or the Bylaws to repeal, restrict, create, or expand proxy rights pursuant to California Corporations Code Section 7613(f)(1);
- (e) amending the Articles of Incorporation pursuant to California Corporations Code Section 7812;
- (f) voting on the sale or exchange of all or substantially all of the Association assets pursuant to California Corporations Code Section 7911(a)(2);
- (g) voting on a merger pursuant to California Corporations Code Section 8012;
- (h) voting on amendments to principal terms of a merger agreement pursuant to California Corporations Code Section 8015(a);
- (i) voting to wind up or dissolve the Association as a corporation pursuant to California Corporations Code Section 8610; and
- (j) voting on a plan of distribution of Association assets in the event of dissolution pursuant to California Corporations Code Section 8719.

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

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

4.10 Adjournment. Whether or not a quorum is present, any meeting of Members may be adjourned from time to time to be reconvened at a later time, subject to Section 4.6, by the vote of a majority of the Members present in person or by proxy at such meeting; however, in the absence of a quorum, no business other than adjournment may be transacted.

4.11 Action Without A Meeting.

4.11.1 Any action, other than the election of Directors, which may be taken at a regular or special meeting, may be taken without a meeting of the Members, if the Association distributes a written ballot to every Member entitled to vote. Such ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association, which shall be a date not earlier than thirty (30) days after distribution of the written ballot to the Members.

The Board shall have the power to extend, at its discretion, the date within which ballots must be returned if sufficient responses are not received by the original deadline set for their return;

4.11.2 Approval by written ballot shall be valid only when the number of votes cast equals or exceeds the quorum that would be required if the action were taken at a meeting, and the number of approvals equals or exceeds the number of votes that would be required to approve the action if it were taken at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot;

4.11.3 The ballot solicitation shall identify both the number of responses needed to meet the quorum requirement and the percentage and/or number of approvals necessary to pass the measure submitted and shall specify the time by which the ballot must be received by the Association in order to be counted.

ARTICLE 5 BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

5.1 Number of Directors. The affairs of this Association shall be managed by or under the direction of a board of five (5) Directors.

5.2 Qualification and Disqualification of Directors. Only persons who are Members in Good Standing of the Association shall be eligible to be elected to or serve on the Board. Only one Owner of a particular Unit may serve on the Board at any time. A person shall be deemed disqualified under the following circumstances: (i) the person is found by a court of competent jurisdiction to be of unsound mind or has been convicted of a felony; (ii) the person fails within sixty (60) days after receiving notice of election to accept such office, either in writing or by attending a meeting of the Board of Directors as a Director; (iii) the person is absent from three (3) consecutive meetings of the Board; or (iv) the person ceases to be an Owner or ceases to be a Member in Good Standing.

5.3 Election and Term of Office. At the annual meetings held in years ending with an even number the Members shall elect three (3) Directors and at annual meetings held in years ending with an odd number the Members shall elect two (2) Directors for terms of two (2) years each to replace those Directors whose terms are then expiring. Each Director shall serve until the expiration of his or her term and thereafter until a successor is elected, or until the earlier disqualification, death, resignation, or removal of such Director.

5.4 Removal. Any Director may be removed from the Board, with or without cause, by the vote of a Simple Majority of the Members. No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of his or her term of office.

5.5 Vacancies. A vacancy shall exist on the Board of Directors in the event of the disqualification, death, resignation, or removal of any Director, or if the authorized number of Directors is increased, or if the Members fail to elect the full authorized number of Directors. A reduction in the authorized number of Directors shall not cause removal of a Director prior to the expiration of his or her term. The Board of Directors, by a majority vote of the Directors who meet all of the qualifications for Directors as set forth in Section 5.2, above, may declare vacant the office of any Director who fails or ceases to meet any required qualification that was in effect at the beginning of that Director's current term of office.

5.6 Filling Vacancies. Any vacancy occurring on the Board of Directors, except a vacancy created by the removal of a Director, may be filled by approval of the Board of Directors, or if the number of Directors then in office is less than a quorum, by the vote of a majority of the remaining Directors at a meeting of the Board, or by unanimous written consent of the Directors then in office, or by a sole remaining Director. A Director so chosen shall serve the remainder of the term of office of the Director whom he or she replaces. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. If the Board of Directors accepts the resignation of a Director tendered to take effect at a future time, the Board or, if the Board fails to act, the Members may elect a successor to take office when the resignation becomes effective.

5.7 Compensation. No Director shall receive compensation for any service he or she may render to the Association as a Director. However, upon approval by the Board, any Director may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.

ARTICLE 6 NOMINATION AND ELECTION OF DIRECTORS

6.1 Nomination. Nominations of candidates for election to the Board of Directors shall be made by a Nominating Committee prior to any meeting of Members at which one or more Directors are to be elected. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make reasonable efforts to nominate as many candidates for election to the Board of Directors as the number of positions on the Board to be filled at a particular meeting and may nominate as many additional candidates as it shall in its discretion determine. All nominations shall be made from among Members in Good Standing. The names of all persons who have been nominated by the Nominating Committee to be candidates for election to the Board at a meeting of the Members shall be set forth in the notice of the meeting. Nominations may also be made from the floor during any such meeting.

6.2 Election. At each election of Directors, the Members in Good Standing or their proxies may cast, in respect to each position on the Board to be filled, one vote for each Unit owned. The persons receiving the largest number of votes shall be elected. The method for voting for Directors shall be as set forth in Section 3.2 of these Bylaws.

ARTICLE 7 MEETINGS OF DIRECTORS

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

7.2 Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice to the Directors, at a place within the Project and on a day and at a time as fixed from time to time by resolution of the Board or, upon proper notice which conforms to the provisions of Section 7.4 of these Bylaws, at another place, day, and time as set forth in such notice. Should the date for any meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. In the event the Board should determine that the business to be transacted by the Board does not reasonably justify monthly meetings, then regular meetings of the Board shall be held at such intervals as the Board may determine, but not less frequently than quarterly.

7.3 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two Directors.

7.4 Notice to Directors. Except as otherwise provided in Section 7.2 of these Bylaws, notice of each meeting of the Board shall be communicated to the Directors by first class mail not less than four (4) days prior to the meeting or by (i) personal delivery, (ii) telephone, including a voice messaging system or other system or technology designed to record and communicate messages, (iii) telegraph, (iv) facsimile, or (v) electronic mail or other electronic means not less than forty-eight (48) hours prior to the meeting; provided that shorter notice may be given in the case of a bona fide emergency; and provided further that notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting, whether before or after the meeting.

7.5 Notice to Members. Except for bona fide emergency meetings and executive sessions, as defined by law, at least four (4) days prior written notice of the day, time, and place of each meeting of the Board of Directors, whether regular or special, shall be given to all Members by posting it in a prominent place or places within the Common Area, by mailing or delivery to each Unit, by newsletter or by other means of communication reasonably designed to provide prior actual notice of such meeting.

7.6 Open Meeting. Regular and special meetings of the Board of Directors shall be open to all Members of the Association, except when the Board meets in executive session. A reasonable time limit for all Members to speak to the Board shall be established by the Board.

7.7 Executive Session. The Board of Directors may meet in executive session to confer with legal counsel or to discuss and vote upon personnel matters, Member discipline, litigation in which the Association is or may become involved, and matters that relate to the formation of contracts between the Association and others. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested to do so by that Member, and that Member and any other person(s) whose participation is, in the judgment of the Board, necessary or appropriate shall be entitled to attend the executive session.

7.8 Telephone Participation. Directors may participate in regular or special Board meetings through the use of conference telephone, electronic video screen communications, or other communications equipment to the extent permitted by law, including, without limitation,

California Corporations Code Section 7211(a)(6) provided that, if notice of the meeting is required, at least one (1) Director must be physically present at the noticed location of the Board meeting.

7.9 Quorum. A majority of the number of Directors then in office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly-held meeting at which a quorum is present shall be regarded as the act of the Board.

7.10 Minutes of Meetings of Directors. Within thirty (30) days after the date of any meeting of the Board, the Board shall make available to the Members either (i) the minutes of that meeting as adopted by the Board, (ii) those minutes as proposed for adoption which shall be marked to indicate draft status, or (iii) a summary of the minutes. Any matter discussed in an executive session shall be generally noted in the minutes of the Board and minutes of executive sessions shall not otherwise be required. Copies of the minutes, proposed minutes, or summary of minutes shall be provided to any Member of the Association upon request and upon reimbursement of the Association's costs in providing such copies. Members of the Association shall be notified annually in writing either at the time that the pro forma budget required under California Civil Code Section 1365 is distributed or at the time of any other general mailing to the entire membership of the Association of their right to obtain copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

ARTICLE 8 POWERS AND DUTIES OF THE BOARD OF DIRECTORS

8.1 Powers. In addition to such other powers as may be expressly set forth in the Governing Documents or provided by law, the Board of Directors shall have the power to:

- 8.1.1 Rules and Regulations. Adopt, publish, amend, repeal, and enforce rules and regulations governing the administration, management, operation, use, and occupancy of the Project, including the use of the Common Area and facilities, the personal conduct of the Members and their tenants and guests within the Project, and any other matter which is within the jurisdiction of the Association;
- 8.1.2 Contracts. Authorize any officer or officers to enter into any contract in the name of, or on behalf of, the Association. Unless expressly authorized by resolution of the Board, no officer shall have any power or authority to bind the Association or to render the Association liable for any purpose or on any account. No contract with any person or entity to supply or furnish the Association with goods or services shall be for a term in excess of one (1) year, except upon the prior affirmative vote or written consent of a Simple Majority of the Members; provided, however, that the foregoing shall not apply to (i) a contract with a public utility company, if the rates charged for the materials or services to be furnished are regulated by the California Public Utilities Commission, the term of which contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and (ii) prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, which policy or policies shall permit short rate cancellation by the insured;

8.1.3 Determination of Good Standing. Determine, after notice to the Member and an opportunity for a hearing by the Board, that a Member is not a Member in Good Standing during any period in which the Member is in default in the payment of any assessment, fine, or other charge levied by the Board or is in violation of any provision of the Governing Documents; however, a Member shall not be denied any privileges of membership except upon an explicit finding by the Board of Directors, after notice and an opportunity for a hearing, that a Member is not a Member in Good Standing for specified reasons. A Member found by the Board to be not a Member in Good Standing shall be deemed to continue in that status until the Board shall make a determination, either upon the Board's own initiative or upon the request of the Member, that such Member is, once again, a Member in Good Standing of the Association;

8.1.4 Sanctions; Hearings; Continuing Violations. Establish and impose monetary penalties (fines) for the infraction of any provision of the Governing Documents in accordance with a schedule of monetary penalties adopted by the Board and distributed to all Members, such fines or penalties to be reasonable in amount given the nature and frequency of each violation; and suspend the voting or other membership rights and privileges of a Member, including the right to use the recreational facilities during any period in which such Member shall be in default in the payment of any assessment, fine, or other charge levied by the Association, and/or for any infraction of the Governing Documents.

At least fifteen (15) days prior to the effective date of a monetary penalty or suspension, written notice shall be mailed or personally delivered to the affected Member. The notice shall state the reasons for the penalty or suspension and shall provide the opportunity for a hearing by the Board of Directors, orally or in writing, at least five (5) days before the effective date of the proposed sanction.

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

hearing to facts and circumstances occurring subsequent to the previous Board hearing relating to the subject continuing violation.

- 8.1.5 Manager. Engage the services of a manager or management company as either an employee or an independent contractor, and engage such other employees or independent contractors as the Board may deem necessary, and to prescribe their duties;
- 8.1.6 Professional Advisors. Consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants, and other professionals in carrying out its authority and responsibility under the Governing Documents and the law, and to pay for such professional services;
- 8.1.7 Investment of Reserve Funds. Invest Association reserve funds in prudent investments subject to the provisions of Section 8.2.5 of these Bylaws;
- 8.1.8 Entry for Repairs. Enter any Unit or any portion of Exclusive Use Common Area which has been designated or assigned for the exclusive use of the Residents of a particular Unit, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Board is responsible or which it is authorized to perform, including without limitation the authorization provided in Section 8.6 of the Declaration. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Unit or any portion of Exclusive Use Common Area to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Unit or Exclusive Use Common Area, any other Unit or the Common Area. 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;
- 8.1.9 Property Taxes. Pay all real property taxes and assessments levied upon any property within the Project to the extent not separately assessed to the Owners. Provided that any such taxes are paid or that a bond insuring the payment is posted, such taxes and assessments may be contested or compromised by the Association prior to the sale or other disposition of any property to satisfy the payment of such taxes;
- 8.1.10 Mergers. To the extent permitted by law, participate in mergers and consolidations with other nonprofit organizations organized for the same purposes as this Association, provided that any such merger or consolidation shall be approved by the affirmative vote or written consent of at least two-thirds (2/3) of the Total Voting Power of the Association;

- 8.1.11 Association Property. Subject to the provisions of Sections 3.4, 5.11 and 5.12 of the Declaration, including any required approval of Members, acquire, own, hold, convey, transfer, dedicate, or otherwise dispose of real or personal property consistent with the purposes and powers of the Association and the management, administration, and operation of the Project or the business and affairs of the Association, and grant and convey easements, licenses, and rights of way in, over, upon, or under the Common Area;
- 8.1.12 Indemnification of Agents. Indemnify and hold harmless, to the maximum extent permitted by California law, each person who is or at any time was a director, officer, employee, or agent of the Association or member of any committee appointed by the Board from and against any and all claims, liabilities, expenses, judgments, fines, settlements, and other amounts, as those terms are defined by California law, actually and reasonably incurred by any such person, and to which any such person shall become subject by reason of his or her being a director, officer, employee, or agent of the Association or member of any committee appointed by the Board;
- 8.1.13 Bank Accounts. Open bank accounts and designate signatories upon such bank accounts, subject to any restrictions set forth in the Governing Documents;
- 8.1.14 Borrowing. Borrow money in the name of the Association; and
- 8.1.15 Other Powers and Duties. Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by other provisions of the Governing Documents, and undertake any action on behalf of the Association as the Board shall deem necessary or proper in furtherance of the purposes and powers of the Association and/or the interests of the Association and its Members.
- 8.1.16 Limitation of Powers. The powers of the Board shall be subject to the limitations set forth in the Governing Documents, including, without limitation, Section 5.10 of the Declaration concerning capital improvements.
- 8.2 Duties. It shall be the duty of the Board of Directors to:
- 8.2.1 Records and Minutes. Cause to be kept a complete record of all its acts and the corporate affairs, including an accurate and current record of the Members setting forth their names and addresses, adequate and correct books and records of account, and minutes of the proceedings of the Members, the Board, and committees of the Board, and to present a statement thereof to the Members at the annual meeting of the Members;

8.2.2 Pro Forma Budget. Prepare and distribute to the Members annually, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of each fiscal year, a pro forma operating budget which shall include all of the following:

- (a) An estimate of the Association's revenue and expenses for such fiscal year on an accrual basis;
- (b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to law, which summary shall be printed in bold type and shall include all of the following:
 - (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component the Association is obligated to maintain, restore, repair, or replace;
 - (ii) A current estimate, as of the end of the fiscal year for which the study is prepared, of the amount of cash reserves necessary to maintain, restore, repair, or replace such major components;
 - (iii) The current amount, as of the end of the fiscal year for which the study is prepared, of accumulated cash reserves actually set aside to maintain, restore, repair, or replace such major components;
 - (iv) The percentage of the amount of cash reserves necessary [per Subparagraph (ii)] that is represented by the amount of cash reserves actually set aside [per Subparagraph (iii)];
 - (v) A statement as to whether the Board of Directors has determined or anticipates that the levy of one or more special assessments will be required to restore, repair, or replace any of the major components or to provide adequate reserves therefor; and
 - (vi) A general statement setting forth the procedures used for the calculation and establishment of reserves to defray the future cost of repair, replacement, or additions to those major components that the Association is obligated to maintain, restore, repair, or replace.

In lieu of the distribution of the pro forma operating budget, the Board may distribute a summary of such budget to all Members together with a written notice that the budget is available at the office of the Association or at another suitable location within the boundaries of the Project and that copies will be provided to a Member upon a Member's request and at the expense of the Association. If any

Member so requests, the Association shall provide a copy of the pro forma operating budget to such Member by United States mail first-class postage prepaid, and such copy shall be mailed within five (5) days of such request. The written notice that is distributed to each Association Member as set forth herein shall be set forth in at least 10-point bold type on the front page of the summary of the budget.

- 8.2.3 Reserve Study. Cause to be conducted, at least once every three years, a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore or maintain as part of a study of the reserve account requirements of the Project if the current replacement value of such major components is equal to or greater than one-half of the gross budget of the Association for the fiscal year, excluding the Association's reserve account for that year. The Board shall review the reserve study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The reserve study required by this section shall include the minimum requirements specified in California Civil Code Section 1365.5 or comparable successor statute.
- 8.2.4 Reserve Funds. Not expend funds designated as reserve funds for any purpose other than the maintenance, restoration, repair, or replacement of, or litigation involving the maintenance, restoration, repair, or replacement of, major components which the Association is obligated to maintain, restore, repair, or replace and for which the reserve fund was established; provided, however, that the Board may authorize a temporary transfer of money from a reserve fund to the Association's general operating fund to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund, and provided, further, that any such transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except as otherwise expressly provided by law. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account;
- 8.2.5 Investment of Reserve Funds. Manage and invest Association reserve funds in a prudent manner designed to achieve the primary objective of preserving principal while realizing a reasonable return and to assure the availability of funds as they are needed based upon the most recent reserve fund study obtained by the Board as provided in these Bylaws and by law;
- 8.2.6 Review of Accounts. Review the Association's operating and reserve accounts at least in accordance with the following minimum requirements:

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

As used in this subsection, the term "reserve accounts" shall mean monies that the Board has identified in its annual budget for use to defray the future costs of repair or replacement of, or additions to, those major components which the Association is obligated to maintain, restore, repair, or replace.

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

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

replacement coverage will not be in effect by the date the existing coverage will lapse.

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

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

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

- (a) statement describing the Association's policies and practices in enforcing lien rights and other legal remedies for default in payment of assessments as required by California Civil Code Section 1365(d);
- (b) a summary of the statutory provisions relating to employing alternative dispute resolution procedures in certain matters related to enforcement of the governing documents which specifically references California Civil Code Section 1354 and which includes the language required by California Civil Code Section 1354(i); the summary shall be provided either at the time the budget required by Section 8.2.2 of these Bylaws is distributed or in the manner specified in California Corporations Code Section 5016;
- (c) a copy of the procedures applicable to imposition of a fine or other monetary penalty, suspension of a Member's rights and privileges, or other sanctions, pursuant to California Civil Code Section 1363(g);

- (d) a notice and statement concerning the insurance carried by the Association as required by Section 8.2.8 of these Bylaws and California Civil Code Section 1365(e);
- (e) a pro forma operating budget as required by Section 8.2.2 of these Bylaws and California Civil Code Section 1365(a); and
- (f) a statement explaining the Members' right to obtain copies of minutes of meetings of the Board as required by Section 7.10 of these Bylaws and by California Civil Code Section 1363.05(e);

8.2.10 Supervision. Supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;

8.2.11 Notice of Assessments. As more fully provided in the Declaration, (i) send written notice to each Owner in advance of each fiscal year of the regular assessment levied against his or her Unit for that fiscal year; and (ii) collect assessments levied by the Association by foreclosing the lien against any property for which assessments are not paid as required in the Declaration and/or by bringing an action at law against the Owner personally obligated to pay the same;

8.2.12 Certificate of Payment of Assessments. Issue, or cause an appropriate officer to issue, upon demand by any proper person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

8.2.13 Insurance. Obtain and maintain in force policies of insurance, and the Board shall have powers and obligations with respect to insurance, as follows:

- (a) Maintain such policy or policies of "special form" coverage insurance covering the buildings, the Common Areas, commonly owned personalty and the Association's personalty, as the Board of Directors of the Association deems necessary or desirable in furthering the purposes of, and protecting the interests of, the Association and its Members but with coverage in an amount not less than 100% of the full insurable value of the matters covered.
- (b) The Association shall maintain a policy of or policies of commercial general liability insurance with coverage levels as determined in the discretion of the Board. Such policy or policies shall be written on an occurrence policy form.
- (c) All property insurance purchased shall be for the benefit of the Association, the Owners and their respective mortgagees, and shall contain a replacement cost endorsement, including building code upgrade coverage.

- (d) The Association shall maintain blanket fidelity bond coverage, or substantially similar insurance coverage, for all officers, directors, employees and agents of the Association. Such coverage shall include coverage for depositor's forgery and shall be in such amount as determined by the Board of Directors in its sole discretion.
- (e) Purchase and carry flood hazard insurance in the maximum amount available (but not to exceed 100% of the cost of replacement) in the event that the area in which the Project is located is designated by the Federal Emergency Management Agency as an area having special flood hazard.
- (f) The Association shall obtain and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.
- (g) The Association shall have the power, as and to the extent the Board deems necessary, to obtain and maintain directors and officers liability insurance.
- (h) The Board shall have the power to obtain and maintain any other insurance that it, in its discretion, deems necessary or prudent including, without limitation, blanket earthquake coverage.
- (i) Each insurance policy maintained by the Association shall provide that it cannot be canceled or substantially modified without ten (10) days' prior written notice to the Association and to each Mortgagee listed as a scheduled holder of a first Mortgage in the policy.
- (j) All insurance coverages shall be reviewed annually by the Board of Directors to determine that coverage is adequate.
- (k) Premiums and like costs for all of the foregoing insurance obtained and maintained by the Association shall be a common expense included in the Assessments or charges made by the Association pursuant to the Declaration.
- (l) Except as provided in this section, the Association shall be under no obligation to provide insurance coverage. Each Owner may obtain such other insurance as he or she deems advisable, including, without limitation, a condominium owners policy.

8.2.14 Enforcement of Governing Documents. Enforce the provisions of the Governing Documents, as more particularly set forth in the Declaration and Bylaws, and perform all acts required of the Board under the Governing Documents or required by law.

ARTICLE 9 OFFICERS AND THEIR DUTIES

9.1 Enumeration of Offices. The officers of this Association shall be a President, a Vice-President, a Secretary, a Chief Financial Officer and such other officers as the Board of Directors may, from time to time, by resolution appoint. The President and Vice-President shall at all times be members of the Board of Directors.

9.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors, following each annual meeting of the Members.

9.3 Term. The officers of this Association shall be elected annually by the Board, and each shall hold office for one (1) year, unless he or she shall sooner resign, be removed by the Board, or otherwise be disqualified to serve.

9.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

9.5 Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he/she replaces, subject to the Board's right to remove an officer.

9.7 Multiple Offices. The offices of Secretary and Chief Financial Officer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 9.4 of this article.

9.8 President. The President shall be the chief executive officer of the Association and shall, subject to control of the Board of Directors, have general supervision, direction, and control of the affairs and the other officers and the employees and agents of the Association. The President shall preside at all meetings of the Members and at all meetings of the Board of Directors, shall have the general powers and duties of management usually vested in the office of the President of an Association, and shall have such other powers and duties as may be prescribed by the Board of Directors and the Bylaws, subject, however, to any limitations contained in the Declaration.

9.9 Vice-President. In the absence or disability of the President, the Vice-President shall perform all the duties of the President, and when so acting, shall have all of the powers of, and be subject to all of the restrictions upon, the President. The Vice-President shall have such other powers and perform such other duties as, from time to time, may be prescribed by the Board of Directors.

9.10 Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board of Directors may prescribe, a book of minutes of all meetings of Directors, Members, and Committees of the Board setting forth the time and place of holding of

such meetings; whether regular or special, and if special, how authorized; the notice thereof given; the names of those present at Directors or Committee meetings; the number of memberships and votes present or represented at Members meetings; and all the proceedings thereof. The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors required by the Bylaws or by law to be given and shall maintain a proper record of the giving of such notice, and shall keep the books, records, and documents of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

9.11 Chief Financial Officer. The Chief Financial Officer, who may from time to time be referred to as the treasurer, shall be responsible for the receipt and deposit in appropriate accounts of all monies of the Association and shall cause disbursement of such funds as directed by resolution of the Board of Directors; may sign all checks and promissory notes of the Association; shall keep proper books of account; shall cause an annual review of the Association's books and financial statements to be made by a public accountant at the completion of any fiscal year for which such review is required by law or as determined by the Board; shall assist the Board in preparation of an annual budget and a statement of income and expenditures to be presented to the Members of the Association as provided by law; and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.

ARTICLE 10 COMMITTEES

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

ARTICLE 11 BOOKS, RECORDS AND FUNDS

11.1 Record Keeping. The accounting books and records of the Association and the minute books of proceedings of the Members, the Board, and Committees of the Board shall, upon written request and during reasonable hours, be subject to inspection by any Member for any purpose, specified in writing, which is reasonably related to such Member's interest as a Member of the Association. The Governing Documents shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost. The Board may adopt and publish reasonable rules and regulations establishing procedures relating to a Member's inspection and obtaining copies of Association records.

11.2 Checks, Drafts, and Evidences of Indebtedness. All checks, drafts, or other orders for payment of money, or notes or other evidences of indebtedness issued in the name of, or payable to, the Association shall be signed or endorsed by any two Directors, any two Officers or any Officer and any Director and in the manner as specified by the Board of Directors; provided, however, that the signatures of at least two (2) persons who shall be members of the Board of Directors or one (1) member of the Board of Directors and one (1) officer who is not a member of the Board of Directors shall be required for the withdrawal of funds from the Association's reserve account.

11.3 Funds and Deposits. Any funds of the Association shall be deposited to the credit of the Association in such banks or other depositories as the Board of Directors shall, from time to time, determine.

11.4 Fiscal Year. The fiscal year of the Association shall be as determined by resolution of the Board of Directors.

ARTICLE 12 AMENDMENTS

These Bylaws may be amended by the affirmative vote or written consent of a Simple Majority of the Members.

ARTICLE 13 MISCELLANEOUS

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

CERTIFICATE OF SECRETARY

I, the undersigned, hereby certify that:

- A. I am the Secretary of THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION.
- B. The foregoing Restated Bylaws of THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION, consisting of 22 pages including this Certificate, were duly approved by the requisite vote of the Members of the Association on March 31, 2000.
- C. The foregoing Restated Bylaws now constitute the bylaws of THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION.

Dated: April __, 2000

**THE GARDENS - SUNNYVALE
HOMEOWNERS ASSOCIATION,**
a California nonprofit mutual benefit corporation

By: _____, Secretary

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OF
THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION**

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OF

THE GARDENS - SUNNYVALE

HOMEOWNERS ASSOCIATION