



Santa Clara Valley Housing Group, Inc.

March 4, 2020

To: Mike Roberts

From: Cory Kusich

Re: Traffic Enforcement Plan Hilltown-Hercules

The above referenced project is stated to be served by a private roadway system and the City has recommended a 15 mph speed limit throughout the planned development. It has been requested that we provide our plan for the enforcement of the speed limit of this development.

1. A Homeowner's Association will be created/established with the development in order to own, maintain and manage all common area property, streets, landscaping, detention basin, etc. This HOA will be professionally managed by an outside company with expertise in this field.
2. The Covenants, Conditions and Restrictions (C.C. & R's) can be shown to the City Attorney, Planning and Engineering for their review and approval.
3. It is our intent to include standard language that deals with the Enforcement Assessments, Parking and Vehicular Restrictions as well as potentially violations as nuisance.
4. Attached to this memo are standard pages out of a non descript HOA, referencing the above mentioned sections. To further buttress these standard sections, we would add specific language such as:

"The posted speed limit within this community is 15 mph. Any violation of this speed limit is considered a peril to the safety of others and will result in a fine established by the Board of Directors. Fines will escalate for repeat offenders. The Management Company may utilize radar, patrol, or any other method to enforce the posted speed limit."

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titled "Reserves". Except for Special Assessments levied pursuant to the Section of the Bylaws titled "Reserves", any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitations set forth in **Section 6.7** below. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

6.5 Capital Improvement Assessment. In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of **Section 4.3.7**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 6.7** below.

6.6 Enforcement Assessments. The Association may levy an Enforcement Assessment against any Owner for bringing an Owner or its Unit into compliance with the provisions of the Governing Documents, and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by the Governing Documents and which satisfies Section 7341 of the California Corporations Code and Section 5855 of the California Civil Code, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 6.13.1** of this Declaration, Enforcement Assessments are assessments but they may not become a lien against the Owner's Unit that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.7 Changes to Assessments.

6.7.1 Limitation on Assessments. From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the

In addition to the foregoing, all signs must comply with all applicable laws. Notwithstanding the foregoing, Declarant and Co-Declarant shall have the right to display signs as set forth in ARTICLE 10.

7.7 Parking and Vehicular Restriction.

7.7.1 Authorized Vehicles. The following vehicles are "Authorized Vehicles": standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less and vehicles which are the principal source of transportation for an Owner. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles subject to **Sections 7.7.3 and 7.7.4** below; however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over streets, driveways or sidewalks in the Community or extends beyond the limits of the space where the Authorized Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Association Rules to adapt this restriction to other types of vehicles.

7.7.2 Prohibited Vehicles. The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats) (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) boats, (i) any vehicles or vehicular equipment deemed a nuisance by the Board, and (j) any other vehicles not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept within the Property within the Community or within any Access Easement except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

7.7.3 General Restrictions. All Authorized Vehicles owned or operated by or within the control of an Owner and kept within the Community shall be parked in that Owner's garage. Guest parking shall only be permitted in designated areas within the Community. There shall be no parking in the Community that obstructs free traffic flow, constitutes a nuisance, violates the Association Rules, or otherwise creates a safety hazard. The parking areas within the Community shall be used for guest parking Authorized Vehicles only and shall not be used for storage, living, recreational or business purposes. No maintenance, repair, restoration, or construction of any vehicle shall be conducted on the Property.

7.7.4 Garage Use. The garages shall be used for parking vehicles only and shall not be converted for living, recreational activities, business or storage that would prevent the ability of an Owner, tenant or lessee to park the number of vehicles in the garage that the garage was designed for. Doors to garages shall be kept closed except during the removal or entry of vehicles therefrom or thereto. Each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or Co-Declarant.

7.8 Mechanic's Liens. No Owner may cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been furnished or delivered to the

16.6 Additional Property Not Subject to Declaration. The Additional Property shall not be subject to any of the rights granted under this Declaration, including but not limited to, easement rights, the rights of use and enjoyment by Owners and the right to enforce this Declaration against such Additional Property, until the conveyance of the first Unit in a Phase of the Additional Property. After such conveyance, the rights granted in this Declaration shall apply only to such Additional Property annexed. Notwithstanding the foregoing, Declarant may elect to commence to pay Regular Assessments on a Phase of Additional Property prior to the conveyance in such Phase to an Owner under a Public Report and, in such case, Declarant shall have the voting rights as to the Condominiums in such Phase pursuant to **Section Error!** Reference source not found. of this Declaration.

16.7 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Community, together with the covenants and restrictions established upon any other property as one plan.

16.8 De-Annexation. Either Declarant may delete all or any portion of the annexed land from the coverage of this Declaration and rescind any Supplementary Declaration, provided that (a) Declarant is the sole Owner of all of the real property described in the Supplementary Declaration to be rescinded or obtains the consent of the fee title Owner of the real property to be de-annexed, (b) Declarant has not exercised any Association vote as an Owner of any portion of the real property to be de-annexed, and (c) assessments have not commenced with respect to any portion of the real property to be de-annexed. Such deletion shall be effective upon the recordation of a written instrument signed by Declarant, in the same manner as the Supplementary Declaration to be rescinded was recorded.

ARTICLE 17 ENFORCEMENT

17.1 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by at least sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

17.2 Enforcement and Nonwaiver.

17.2.1 Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such

covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant, or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

17.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in **Section 17.2.1**, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the applicable notice and delivery requirements and other provisions of California Civil Code Section 4000 *et seq.* relating to such enforcement action.

17.3 Notice of Actions Against Declarant. Any claim, dispute or other controversy between: (i) the Association and/or any Owner(s) and (ii) the Declarant or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this **Section 17.3**) relating to this Declaration, the use, condition, and/or operation of any Improvements or landscaping located within the Community, (individually and collectively the "Claim") shall be subject to the claims procedures set forth in **Exhibit "D"** attached hereto and incorporated herein.

The claims procedures in **Exhibit "D"** do not apply to any action taken by the Association to enforce delinquent assessments.

17.3.1 AGREEMENT TO ARBITRATE. BY EXECUTING THIS DECLARATION, DECLARANT, AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER, AND THE ASSOCIATION AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND ASSOCIATION, OWNER AND DECLARANT ARE GIVING UP ANY RIGHTS DECLARANT, OWNER AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, OWNER AND ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 17.3.1. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

ARTICLE 18 GENERAL PROVISIONS

18.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.