

Overview of “Declaration” Amendments – READ THIS FIRST

Several times over the years, the Sunny Hill Board of Directors has (unsuccessfully) attempted to revise the HOA’s governing documents (including 2014-15 and 2023-24). Many residents have expressed displeasure that past attempts did not allow for separate votes on modernization of the documents and addition of new restrictions.

With this in mind, we have prepared a proposed amendment to the “Declaration” (also referred to as the “CCRs”) to modernize the document, clarify existing restrictions that are often misinterpreted, slightly loosen a few restrictions, and add some important legal provisions. NO new restrictions have been added, and authorization for imposing fines is NOT included.

Additional restrictions or authorization for fines, if desired, can be voted on separately at a later time.

Proposed Amendment Highlights

- Remove language about the “Declarant” who built the subdivision
- Clarify antenna exclusion to comply with federal law (the HOA cannot ban certain antennas under one meter in diameter)
- Clarify that Board approval is not needed for landscaping changes (this was always the case, this proposal just makes it explicit)
- Clarifying that street parking is subject to the Lake Oswego City Code and is not governed by our documents (our parking restrictions apply to individual lots only, not to the public street)
- Specify the types of exterior changes that need approval and those that do not (currently, any change to the exterior of the home technically requires Board approval)
- Remove tree removal approval requirement. The City of LO has a very robust tree permitting process – the HOA probably does not need to be involved.
- Remove written notice for parking RVs/boats for up to 5 days (just changing the written notice requirement, not the amount of time)
- Legal provisions added:
 - Governing document priority (this was already true, just making it explicit)
 - Indemnification (indemnifying Board members is important for getting people to volunteer)
 - Director Liability
 - Voting methods (provides flexibility)

“EXHIBIT A”

FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

~~KNOW ALL MEN BY THESE PRESENTS: Homesite Development Corporation, an Oregon Corporation, hereinafter called the “Declarant”, does hereby declare as follows:~~

~~WHEREAS, Declarant is the Contract Purchaser of the real property in Clackamas County, Oregon, known as Sunny Hill, as the same appears in a Plat recorded in Book 74 Pages 23 & 24 of Plat Records of Clackamas County, Oregon; and~~

~~WHEREAS, Declarant desires to subject said property to the conditions, restrictions, and charges herein set forth for the benefit of said property and its present and subsequent owners as hereinafter specified; and~~

~~WHEREAS, the power to enforce certain of said conditions, restrictions, and reservations and charges is to reside in the Sunny Hill Home Owners Association, a non-profit corporation organized under the laws of the State of Oregon, hereinafter referred to as the “Association”;~~

~~NOW, THEREFORE, Declarant herby declares that the property described above is and shall be held upon and conveyed subject to the conditions, covenants, restrictions, easements, reservations, and charges hereinafter set forth:~~

RECITALS

A. Sunny Hill Home Owners Association (the ‘Association’), an Oregon non-profit corporation, is the administrator of certain real property located in the City of Lake Oswego, County of Clackamas, and State of Oregon, known as Sunny Hill (the ‘Property’). Owners of lots in the Property are members of the Association (‘Members’). From among the Members, directors (‘Directors’) are elected to serve on the Association’s board (‘Board of Directors’).

B. The plat of Sunny Hill was recorded on December 29, 1977, in book 74, pages 23 and 24, of the Plat Records of Clackamas County, Oregon. The total number of residential lots within the Property is 102. The Property also includes nine common area open space tracts – tracts A, B, C, D, E, F, G, H, and J shown on the plat (the ‘Common Area’).

C. The initial Sunny Hill Declaration of Restrictions was recorded in Clackamas County, Oregon, on 23 March, 1978 as 78-11873. Amendments were recorded as 78-45253 on 13 October, 1978; 85-09774 on 25 March 1985; 85-20062 on 12 June, 1985; and 86-09277 on 17 March 1986.

D. The Association desires to subject the Property to the covenants, conditions and restrictions set forth herein for the benefit of the Property and its present and subsequent owners. The Association is a nonprofit corporation, to which shall be delegated and assigned the powers of maintaining and administering the Common Area, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

E. As a planned community, Sunny Hill is subject to certain provisions of the Oregon Planned Community Act (the "Act"), ORS 94.550 to 94.783 and as may be amended, to the extent consistent with the Association's governing documents. Because the Association was incorporated prior to passage of the Act, not all provisions of the Act apply to the Association.

NOW THEREFORE, Sunny Hill Home Owners Association, with the approval of greater than 50% of its Members, hereby amends and restates the Declaration of Restrictions for Sunny Hill to provide that: from and after the date on which this First Amended and Restated Declaration of Covenants, Conditions, and Restrictions is recorded with the recorder of Clackamas County, Oregon, it will supersede and replace documents recorded as Nos. 7811873, 7845253, 8509774, 8520062, and 86-09277; the conditions, covenants, restrictions, easements and reservations hereinafter set forth shall constitute covenants to run with the land and shall be binding upon all persons claiming under them; and also that the conditions, covenants, restrictions, easements and reservations hereinafter set forth shall inure to the benefit of and be limitations upon all future owners of lots in the Property and owners of any interest in any lot in the Property.

ARTICLE I – RESIDENTIAL USE LIMITATION

No lot shall be used for any purpose other than residential purposes, and no building other than one detached single-family dwelling with at least a two-car garage shall be erected, placed or permitted to remain on any lot. All roof drains shall be dispersed into dry wells on each lot.

ARTICLE II - EASEMENTS

Easements for the utilities, as outlined on the recorded plat of Sunny Hill over the ~~common tracts~~Common Area, are hereby reserved to the City of Lake Oswego.

ARTICLE III – NOXIOUS ACTIVITIES

No noxious or offensive activity shall be permitted upon any lot, nor shall anything be done thereupon, or in any single-family dwelling erected thereon, which may be, or may become, an annoyance or nuisance to the neighborhood.

ARTICLE IV – STRUCTURES AND PARKING

No structure, either affixed to or separate and apart from the residential dwelling, shall be erected or built or placed upon any lot without the prior written consent of the Association; which Association shall require a showing by the applicant that the proposed structure also complies with applicable state and city building codes and any other applicable codes, and that such proposed structure is in harmony with the external design of the residential dwelling on the lot of the proposed structure. No storage structures which are separate and apart from the residential dwelling will be allowed.

No trailer, boat, tent, camper, whether mounted or unmounted, motorhomes, recreational vehicles, or any related equipment, ~~or any or~~ similar vehicle, shall be placed, parked, or stored outside of a garage on any lot. Temporary parking of the above items on the driveway for a period not to exceed five (5) days in any calendar month is allowed. Temporary parking for two consecutive five-day periods (the equivalent of ten consecutive days) is not allowed.

No vehicle shall be parked in any location on any lot other than on the driveway, such driveway to conform with all applicable codes and Association restrictions. Parking in public streets adjacent to any lot is governed by the Lake Oswego City Code and not this First Amended and Restated Declaration of Covenants, Conditions and Restrictions.

~~A lot owner must make written notification to the Board of Directors of temporary parking of the above items on the driveway for a period not to exceed five (5) days in any calendar month. Two consecutive five-day periods (the equivalent of ten consecutive days) will not be allowed.~~

ARTICLE V - SIGNS

No sign of any kind shall be displayed to public view on any lot or improvement thereon, except one on-premises sign advertising the property for sale or rent. ~~This restriction shall not~~

~~apply to signs used by Declarant and/or his assigns during the period of construction and the initial sale of the lots in the plat.~~

ARTICLE VI - FENCES

No fence or wall of any kind shall be erected without the prior written consent of the Association. Furthermore, the maximum height of a site-obscuring fence shall be six (6) feet, and such fence shall be of wood construction and shall not be placed forward of the side of the residence along which it parallels.

ARTICLE VII - ANIMALS

Subject only to reasonable accommodations required by fair housing laws, ~~No~~ animals, including livestock or poultry of any kind, shall be raised, bred, or kept on any lot; except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

ARTICLE VIII - ANTENNAS

Exterior satellite dishes or antennas with a diameter of one meter or less that are covered under the Federal Communications Commission over-the-air reception devices rule (OTARD) are allowed. ~~All other No television antennas, or antennas of any kind, may must~~ be installed in such a manner as to not be visible outside of any dwelling.

ARTICLE IX – PREMISES MAINTENANCE AND LANDSCAPING

~~No tree eight (8) inches or more in diameter shall be removed from any property without the prior written consent of the Association. Furthermore, each~~ Each ~~Lot~~ Owner shall maintain the exterior of the premises and the improvements situated thereon, including but not limited to roofs, fences, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements, in a neat and orderly manner and in good order and repair.

Premises surrounding buildings shall be maintained; weeds shall be removed with reasonable frequency; and, grass shall be cut during growing seasons so as to conform to neighborhood appearances; Board of Directors approval is not required for landscaping changes; however, and generally the outside appearances of the homes and land surrounding

them shall be maintained in a manner and to a standard consistent with that generally maintained by the neighboring properties and lots throughout the ~~subdivision~~ Property.

ARTICLE X – EXTERIOR CHANGES TO HOMES

Prior to commencement of construction of any dwelling and/or fence on any lot, the plans, elevations, site location, materials and exterior colors must be approved in writing by the ~~Association~~ Board of Directors; once approval is received, any subsequent changes of any kind must be submitted to the ~~Association~~ Board of Directors for written approval.

Board of Directors approval is required before commencing major exterior alterations or renovations to an existing home on any lot, including, but not limited to, additions, roofing or siding replacement, painting, and driveway replacement or modification.

Board of Directors approval is not required for minor changes to the exterior of an existing home, including, but not limited to, siding or roofing repair, touch-up painting, replacement of exterior light fixtures, replacement of house numerals, and like-for-like replacement of exterior features not included in the above list of major exterior alterations or renovations.

For exterior alterations or renovations requiring Board of Directors approval, ~~Furthermore, upon completion of construction of any dwelling, no subsequent exterior addition to or change or alteration to the exterior of the residence, including but not limited to staining and roofing, shall be made until the~~ plans and specifications showing the nature, kind, shape, type, materials, color and location of the same shall ~~have been~~ be submitted to and approved by the Board of Directors in writing, such approval considering as to the harmony of external design and compatibility to surrounding structures ~~by the Association~~.

ARTICLE XI – ASSOCIATION RESPONSIBILITIES

~~At any time after Declarant has sold fifty percent (50%) of the lots in the plat of Sunny Hill, and Declarant has completed the interior improvements, Declarant may transfer ownership of the common areas and facilities by deed to the Association. Thereafter, the~~ The Association shall be responsible for the care, maintenance, and costs ~~therefore of all the common~~ Common areas ~~Area~~ and any improvements to facilities the Common Area, and for levying and collecting annual charges and assessments, as provided in the Articles of Incorporation and By-Laws of the Association. ~~Further, the Association shall succeed to Declarant's rights and powers to enforce the provisions of this Declaration of Restrictions except for those provisions contained in Article X.~~

ARTICLE XII – ANNUAL ASSESSMENTS

Each lot ~~sold by Declarant~~ in Sunny Hill shall be subject to an annual charge or assessment as more specifically set forth in the Articles of Incorporation and By-Laws of the Association, to which reference may be made for additional provisions and details. ~~The initial amount of the annual assessment shall be Fifty Dollars (\$50.00) per lot. Until the first election of directors to the Board of Directors of the Association is conducted by the members pursuant to Article VII of the Articles of Incorporation of the Association, the annual assessment shall be paid to Declarant for uses consistent with the general purposes of the annual assessment, and Declarant shall have the same power to place and enforce a lien upon any lot with respect to which payment is delinquent as granted to the Association by Article IX of the Articles of Incorporation of the Association.~~

~~No assessments or charges of any kind or amount shall be levied upon lots owned by Declarant until once conveyed.~~

ARTICLE XIII – REASONABLE STIPULATIONS AND AMENDMENT

In construing this ~~Declaration~~First Amended and Restated Declaration of Covenants, Conditions and Restrictions (also referred to in Article XIII as the “Document”), or any part thereof, stipulations which are necessary to make ~~this the Declaration~~Document, or any of its terms or provisions, reasonable, are implied. The determination by any court that any of the provisions of ~~this the Declaration~~Document are unlawful or void shall not affect the validity of any of the other provisions hereof.

All of the conditions, restrictions, and charges set forth in ~~this the Declaration~~Document are imposed upon said property for the direct benefit thereof, and of the owners thereof, as a part of the general plan of development, improvement, building, and maintenance hereby adopted ~~therefor by Declaration, and such~~These conditions, covenants and restrictions ~~and charges~~ shall run with the land and shall continue ~~and be~~ in full force and effect until extinguished, or modified as herein provided. ~~Any of the conditions, covenants and restrictions, and charges, or any of them~~ may be changed, modified or extinguished at any time by a ~~written~~ instrument ~~approved by a executed by the Association upon written agreement executed by the then-record owners of a majority or more of the lots in Sunny Hill; however the conditions, restrictions, and charges, or any of them, may not be changed, modified or extinguished by the Association as long as Declarant owns any lot, or lots, in Sunny Hill, unless the Declarant shall have first given its written approval to such change, modification or extinguishment.~~ Any amendment must be executed, recorded, and certified as provided by law.

ARTICLE XIV - ENFORCEMENT

Enforcement of the provisions hereof shall be by action at law or suit in equity against any person or persons violating, or attempting to violate, any provision or provisions hereof, and the prevailing party shall be entitled to such attorney's fees as the court may deem reasonable in any such action or suit.

If an action at law or suit in equity is brought by one or more Members against one or more other Members without involvement of the Association, then the Association shall not be liable for attorney's fees regardless of the outcome of the action.

~~ARTICLE XV~~

~~Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by the Declarant or its duly authorized agent of structures or signs for the conduct of its business in connection with Sunny Hill while the same, or any part thereof, is owned by Declarant.~~

ARTICLE XVI - WAIVER

The provisions contained in this Declaration shall bind and inure to the benefit of, and be enforceable by, ~~the Declarant,~~ the Association, and the owner or owners of any portion of the said Property, and their, and each of their, legal representatives, successors, heirs, and assigns, and failure by ~~Declarant or by~~ the Association, or by any of the property owners or their legal representatives, heirs, successors, or assigns to enforce any of such conditions, covenants or restrictions or ~~charges~~ herein contained shall in no event be deemed a waiver of the right to do so.

~~ARTICLE XVII~~

~~In those instances where a lot owner must obtain written consent for any action or undertaking, such consent shall be obtained from Declarant until Declarant has transferred ownership and responsibility for maintenance of common areas and facilities to the Association, and the Association has conducted its first election of directors as provided in Article VII of the Articles of Incorporation of the Association, after which time written consent shall be obtained from the Association.~~

~~ARTICLE XVIII~~

~~Any or all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to the Association or to any other corporation or association which is now organized, or which may hereafter be organized, and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned; and upon any such corporation or association evidencing its intent in writing to accept such assignment and assume such duties it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant~~

ARTICLE XVI – MISCELLANEOUS

Governing Document Priority - In the event of a conflict among any of the provisions in the documents governing the Association, such conflict shall be resolved by looking to the following documents in the order of precedence shown below, with (a) having the highest precedence:

- (a) Declaration
- (b) Articles
- (c) Bylaws
- (d) Rules and Regulations created or amended by the Board of Directors.

Voting Methods. The Board of Directors may designate the method of voting on any particular matter, to include casting votes in person, by written ballot, by absentee ballot, by proxy, or by any other means specified in the Oregon Planned Community Act, including electronic ballot.

Indemnification - To the fullest extent authorized by law and the governing documents of the Association, the personal liability of each Director to the Association or the Members for monetary damages for conduct as a Director shall be eliminated. Each Director and officer and the manager or managing agent, if any, shall be indemnified and held harmless by the Association, to the fullest extent permitted by laws, from and against all liabilities, including attorneys' fees, reasonably incurred or imposed upon such person in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been a Director, officer, manager, or managing agent, and shall be indemnified upon any reasonable settlement thereof. The foregoing rights of indemnification shall be in addition to and not exclusive of any and all other rights conferred on such persons under any agreement, vote of the Members or otherwise.

Director Liability - No Director of the Association shall have personal liability to the Association or the Members for monetary damages arising out of such Director's conduct as a Director occurring after the date of filing of the Articles of Incorporation, except for the following:

- (1) Any breach of the Director's duty of loyalty to the Association and the Members;
- (2) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.

A Director's civil liability for the negligent performance of the Director's duties shall be limited to acts of gross negligence and intentional acts. If any past or current officer is made party to a legal proceeding because of their position on the Board of Directors, the Association shall indemnify the individual against liability and expenses incurred to the maximum extent permitted by law.