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BY-LAWS

OF

HERITAGE GREENS OF MORGAN HILL OWNERS' ASSOCIATION

ARTICLE I

NAME, PRINCIPAL OFFICE AND BY-LAWS
APPLICABILITY AND ACCEPTANCE

Section 1 Name: The name of the corporation is Heritage Greens of Morgan Hill Owners' Association, hereinafter referred to as the "Association."

Section 2 Principal Office: The principal office of the corporation shall be located in the Morgan Hill, Santa Clara County, State of California.

Section 3 By-Laws Applicability: The provisions of these By-Laws are applicable to the project. The term "project" as used herein shall include the land and all structures and improvements thereon. All present and future owners, tenants, future tenants or their employees, or any other person that might use the facilities of the project in any manner, are subject to the regulations set forth in these By-Laws and to the recorded or to be recorded Declaration of Covenants, Conditions, and Restrictions applicable to the property or any portion thereof referred to as the "Declaration" herein.

Section 4 By-Laws Acceptance: The acceptance of a deed to any Lot or entering into occupancy or use of any Lot in the project shall constitute (1) acceptance and ratification of these By-Laws and the Declaration and (2) an agreement to be bound by and comply with the provisions of these By-Laws and the Declaration as any or all may, from time to time, be amended.

ARTICLE II:

MEMBERS

Section 1 Member Defined: Every owner of a Lot shall be a member of the Association. Upon termination of ownership, an owner's membership shall automatically terminate and be transferred to the new owner of the Lot. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Section 2 Proof of Membership: No person or persons shall exercise the rights of membership until satisfactory proof has been furnished to the Secretary of the Association of qualification as a member pursuant to the terms of the Declaration and the Articles of Incorporation. Such proof may consist of a copy of a duly executed and acknowledged grant deed or title insurance policy showing said person qualified in accordance therewith or an executed contract of sale in the case of a contract vendee, which said deed, policy or contract shall be deemed conclusive in the absence of a conflicting claim based upon a later deed, policy or contract.

Section 3 Membership Inseparable from Ownership: "Owners" (as defined in the Declaration), including the Declarant, shall be entitled to exercise the rights and privileges of membership in the Association. No person other than an Owner may be a member of the Association. Not more than one (1) membership may be issued to any member. Membership shall be appurtenant to and may not be separated from ownership of any Lots which are subject to assessment by the Association.

Section 4 Responsibilities of Members: The members have the ultimate responsibility for the administration of the project. Except as day to day responsibility, as specified by the Declaration and these By-Laws, is delegated to the Board of Directors, or committees, all members share equally in the responsibility for the appropriate operation of the project.

Section 5 Voting Rights: The Association shall have two classes of voting membership, as set forth in the Declaration, Article III, Section 4.

Section 6 Voting Requirements: Any action taken by the Association (with the exception of enforcing a bond) which must have the approval of the members other than the Declarant shall expressly require the vote or written assent of fifty-one percent (51%) of each class of membership during the time that there are two outstanding classes of membership. When only a single class exists after conversion of Class B to Class A, any action by the Association which is subject to the approval of members other than the Declarant shall require the vote or written assent of fifty-one percent (51%) of the total voting power of the Association as well as the vote or written assent of fifty-one percent (51%) of the total voting power of members other than the Declarant.

Section 7 Majority of Owners: As used in these By-Laws, the term "majority of owners" shall mean those owners holding fifty-one percent (51%) of the Votes in accordance with the provisions of Section 5 of this Article II. During that period of time that there are two outstanding classes of membership, "majority of owners" shall mean those owners holding fifty-one percent (51%) of the votes of each class of membership, except in respect to action required for the enforcement of obligations of the Declarant.

ARTICLE III

MEMBERSHIP MEETINGS

Section 1 Annual Meetings: Regular meetings of members of the Association shall be held not less frequently than once each calendar year. The first meeting of the members, whether a regular or special meeting shall be held within 45 days after the closing of the sale of the Lot which represents the 51st percentile interest authorized for sale under the first public report for the project, provided that public report authorizes the sale of 50 Lots or more within the project. However, in no event shall the meeting be held later than six months after closing the sale of the first Lot sold pursuant to the public report issued for the Heritage Greens of Morgan Hill project.

Subsequent annual meetings shall be held within two weeks of the same day of the week of the same month each year. At such meetings there shall be elected by ballot of the owners a Board of Directors in accordance with the requirements of Sections 1 and 3 of Article IV of these By-Laws. The owners may also transact such other business of the Association as may properly come before them.

Section 2 Special Meetings: Special Meetings of the members may be called at any time by the president, a vote of the Board of Directors itself, or by written request signed by members representing five percent (5%) of the total voting power of the Association.

Section 3 Notices: Written notice of each meeting of the members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) but not more than ninety (90) days before such meeting to each member entitled to vote, addressed to the member's address last appearing on the books of the Association, or supplied by such member of the Association for the purpose of notice. Such notice shall specify the place, date, and hour of the meeting, and those matters the Board intends to present for action by the members, but except as provided by law, any proper matter may be presented at the meeting for action. Notice shall also be given to any holders of first mortgage or equivalent liens on lots so requesting notice at the address

supplied by the holder to the Association and each such holder shall have the right to designate a representative to attend any meeting.

Section 4 Location: Meetings of the Association shall be held on the project whenever possible, or if a larger meeting place is required, at such other suitable place in Morgan Hill which is convenient to the owners and designated by the Board of Directors.

Section 5 Proxies and Absentee Ballots: Votes may be cast in person or by proxy. Proxies must set forth the general nature of the matter to be voted on and be filed with the Secretary of the Board or other designated party before the appointed time of each meeting. A proxy shall terminate if written notice of the death or mental incapacity of the maker (or the termination of a membership as a result thereof) is received by the Association before the vote is counted. The Board of Directors shall be authorized to adopt rules and regulations permitting the filing of absentee ballots providing such ballots otherwise comply with the terms and conditions of these By-laws.

Section 6 Quorum: Attendance in person or by proxy of fifty-one percent (51%) of the total voting power of the Association membership will constitute a quorum for the conduct of business. In the absence of a quorum at a member's meeting, a majority of those present, in person, or proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of quorum shall be to a date not less than ten (10) days and not more than thirty (30) days from the original meeting date. A quorum for such an adjourned meeting shall be twenty-five percent (25%) of each class of members, unless a vote is taken to increase assessments beyond the limit provided for board action (pursuant to the Declaration's Article V, Section 2), in which case a quorum consisting of more than fifty percent (50%) of the owners shall be required.

If the time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed after adjournment, notice for such adjourned meeting shall be sent in accordance with Section 3 above.

Section 7 Action Without Meeting: Any action which may be taken by the vote of members at a regular or special meeting except the election of members of the Board of Directors where cumulative voting is a requirement may be taken without a meeting by obtaining the written consent of the same required percentage of the

membership as if such action were taken at a regular or special meeting of the membership. Any such action taken without a meeting may be taken if done in compliance with the provisions of Section 7513 of the Corporations Code.

Section 8 Proxy or Written Ballot: Any form of proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot.

The proxy or written ballot shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

Section 9 Association Meeting Procedure. Minutes. etc.: Association meetings shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt.

In addition to their access to Association records set forth elsewhere in these By-laws, members may attend Board of Directors' meetings, except executive sessions, and obtain copies of the minutes of such meetings, except executive sessions. A member who is to be disciplined by the Association may attend the executive session.

Section 10 Personal Liability of Officer or Director for Injury:

(a) A volunteer member of the Board of Directors or an officer of the Association shall not be personally liable in excess of the coverage specified in paragraph (4) below to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the officer or director if all of the following criteria are met:

- (1) The act or omission was performed within the scope of the officer's or director's Association duties; and
- (2) The act or omission was performed in good faith; and
- (3) The act or omission was not willful, wanton, or grossly negligent; and

(4) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance which shall include coverage for (A) general liability of the Association and (B) individual liability of officers and directors of the Association for negligent acts or omissions in that capacity; provided, that both types of coverage are in the minimum amount of \$500,000.

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant, as defined in subdivision (g) of Section 1351 of the California Civil Code, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest, as defined in subdivision (1) of Section 1351, at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer for the purposes of this section.

(d) Nothing in this section shall be construed to limit the liability of the Association for its negligent act or omission or for any negligent act or omission of an officer or director of the Association.

(e) This section shall only apply to a volunteer officer or director who is a tenant of a separate interest in the project or is an owner of no more than two separate interests in the project.

ARTICLE IV:

BOARD OF DIRECTORS

Section 1 Number: The affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) persons, each of whom, except for those appointed and serving as first Directors, must either be an Owner or an agent of Declarant for so long as Declarant owns a Lot in the Project.

Section 2 Nomination: Nomination for election to the Board may be made by a Nominating Committee appointed by the Board prior to the Annual Meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies to be filled. Nominations may also be made from the floor at the Annual Meeting.

Section 3 Election: Election to the Board shall be by secret written ballot. A member shall be entitled to cumulate votes for a candidate or candidates if such candidate's name or candidates' names have been placed in nomination prior to the voting and the member has given notice at the meeting prior to the voting of the member's intention to cumulate votes. If any one member has given such notice, all members may cumulate their votes for candidates in nomination.

Cumulative voting, if applicable, shall mean that each member, or his proxy holder, shall be entitled to cast the number of votes to which he is entitled by reason of his membership in the Association as set forth in Article II Section 5 hereof times the number of Directors to be elected. Each person may allocate his votes among several candidates in any manner he chooses or cumulate his votes for any one candidate. The persons receiving the largest number of votes shall be elected.

Section 4 Non-Declarant Voting: Notwithstanding any contrary provision in these By-Laws, so long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two outstanding classes of membership in the Association, not less than twenty percent (20%) of the incumbents on the Board shall be elected solely by the votes of owners other than the Declarant. In order to accomplish the above result, two elections shall be held. The first election will be by members other than

the Declarant to elect twenty percent (20%) of the directors. The second election will be by the total voting power of the Association and is to elect eighty percent (80%) of the directors. In the event of an election necessitated by the resignation or removal of a director who was elected pursuant to the above procedure, the successor of such director shall be elected in the same manner as the director being replaced.

Section 5 Staggered Terms: So as to provide continuity on a Board composed of five (5) or more members, there shall be staggered terms, determined as follows: At the first Board of Directors meeting following the first annual meeting, the Directors shall each draw lot to determine their initial terms of office. Initial terms to be established are: three (3) directors shall serve until the second annual meeting of the membership and two (2) directors shall serve until the third annual meeting of the membership, at which meetings, unless earlier removed, their respective successors shall be elected for a term of two (2) years.

Section 6 Removal: At any Annual or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the owners and a successor may then and there be elected by the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant to fill the vacancy thus created. Any Director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting.

Unless the entire Board of Directors is removed from office by the vote of members of the Association, no individual Board members shall be removed prior to expiration of his term of office if the votes cast against removal would be sufficient to elect the Board if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors was then being elected. Further, a Director elected to office solely by the votes of members other than the Declarant may be removed from office only by the vote of a majority of members other than the Declarant.

Section 7 Vacancies: Vacancies in the Board of Directors created by removal of a Director pursuant to Section 6 of this Article, or death or incapacity of a Director, shall be filled by vote of the Association pursuant to Sections 3 and 4 of this Article, and each person so elected shall be a Director for a period of the remaining term of the replaced Director. Vacancies caused by a resignation of a Director shall be filled by a vote of the remaining Directors.

Section 8 Meetings:

Subsection 8.1 Regular Meetings: Regular meetings of the Board shall be held at such intervals as the Board considers necessary and desirable, but not less often than once every three (3) months. Regular meetings shall be held within the project, unless in the judgement of the Board of Directors a larger meeting room is required in which case it shall be held as close to the project as is practical, and at such hour as may be fixed from time to time by resolution of the Board. Notice of the time and place of a meeting shall be posted at a prominent place or places within the Common Area and shall be communicated to each member of the Board of Directors not less than four days prior to the meeting unless the time and place of the meeting is fixed by the By-Laws, provided however that notice of a meeting need not be given to any Board member who has signed a waiver of notice or a written consent to holding a meeting. If the Common Area is unsuitable for posting of the notice of the meeting, the Board shall communicate the notice of the time and place of such meeting by any means it deems appropriate.

Subsection 8.2 Special Meetings: Special meetings of the Board may be called by written notice signed by the President or any two Directors. The notice shall specify the time and place of the meeting and the business to be conducted and it shall be mailed or delivered to the residence of each Director and posted in a manner as required for a regular meeting at least seventy-two (72) hours prior to the scheduled time of the meeting. Attendance at a meeting shall constitute a waiver of notice.

Subsection 8.3 Organizational Meetings: The first meeting of a newly elected Board of Directors shall be held within fourteen days of election at a place fixed by the Board.

Subsection 8.4 Quorum: At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting and set a new meeting date, but may not transact any other business.

Subsection 8.5 Open Meetings: Any member of the Association may attend meetings of the Board of Directors of the Association, except when the Board adjourns to "executive session" to consider litigation, matters that relate to the formation of contracts with third parties, or personnel matters.

While attendance of members other than Directors is expressly permitted, participation in the meeting is limited to Directors unless a member is expressly authorized to participate by a majority vote of a quorum of the Board of Directors.

Subsection 8.6 Executive Sessions: With approval of a majority of its members present at a meeting in which a quorum for the transaction of business has been established, the Board may adjourn and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and order of business of a similar nature. The nature of any business to be considered in executive session shall first be announced in open session. Any matter discussed in executive session shall be generally noted in the minutes of the Board of Directors.

Subsection 8.1 Action Without Meeting: The Board of Directors may take actions without a meeting if all of its members consent in writing to the action to be taken. If the Board resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the Common Area within three days after the written consents of all Board members have been obtained. If the Common Area is unsuitable for posting the explanation of the action taken, the Board shall communicate said explanation by any means it deems appropriate.

Section 9 Directors Indemnification: A director shall be indemnified by the members for all actions taken against such Director personally in his office of Director if he performs the duties of a Director, in good faith, in a manner such Director believes to be in the best interest of the Association and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports, statements, financial statements, and other data when supplied by officers, agents, employees, accountants, attorneys, committees, and others, so long as, in each case, the Director believes such information is presented by persons who are reliable and competent in the matter presented and as long as the Director acts in good faith, in a

manner such person believed to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

ARTICLE V:

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1 Powers of the Board: The Board of Directors shall have the powers necessary for the administration of the affairs of the Association, the maintenance of the Common Area and the regulation of the Association, and may do all such acts and things as are not prohibited by law or by these By-Laws directed to be exercised and done by the owners, including but not limited to:

Subsection 1.1 Association Rules: Subject to the provisions of the Declaration, the Articles of Incorporation, and these By-Laws, the Board may adopt such Rules as it deems necessary for the management of the Project. Such Rules may concern, but need not be limited to, the following subjects:

- A. Use of the Common Area;
- B. Signs;
- C. Collection and disposal of refuse;
- D. Minimum standards of maintenance of the property;
- E. Use of any facilities or equipment in the Common Area
- F. Use of parking spaces located in the Common Area;
- G. Any other subject within the jurisdiction of the Association as provided in these By-laws and the Declaration.

A copy of the Rules so adopted shall be furnished to each Lot Owner, and each Lot Owner, his family, guests, employees, invitees, licensees and tenants shall comply with such Rules.

Subsection 1.2 Discipline: The Board shall enforce the provisions of the Declaration, these By-Laws and the Rules in accordance with these By-laws and the Declaration, Article IV, Section 2, Subsection 2.5.

If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any Association member for a violation of the governing documents or Rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, the Board of Directors shall adopt and distribute to each member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents. The Board of Directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members pursuant to this Subsection. The Board of Directors shall meet in executive session if requested by the member being disciplined, and the member shall be entitled to attend the executive session.

Subsection 1.3 Expenses: The Board may incur and/or pay expenses on behalf of the Association including taxes, assessments, insurance, and goods and services.

The Association and its Board of Directors shall be prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to California Corporations Code Section 7513, of a simple majority of the members, other than the Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in members other than the Declarant:

(1) Entering into any contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the exception of the following:

- A. A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.
- B. A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term of which the supplier will contract at the regulated rate.

- C. Prepaid casualty and/or liability insurance policies not to exceed three years duration provided that the policy permits short rate cancellation by the insured.
- D. Lease agreements for laundry room fixtures and equipment, if any, which do not exceed five (5) years duration provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership of ten percent (10%) or more.
- E. Agreements for cable television services and equipment or satellite television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more.
- F. Agreements for sale or lease of burglar alarm and fire alarm equipment, installation, and services not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership of ten percent (10%) or more.
- G. A contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty, or other obligation upon ninety (90) days written notice of termination to the other party.

Subsection 1.4 Delegation & Employment: The Board may employ, contract for, and/or establish and delegate to committees, officers, employees, and other agents of the Association reasonable powers to carry out the power and duties of the Board with the exception of delegating its powers to conduct hearings, levy fines or impose discipline in accordance with Subsection 1.2 of this Article V.

Subsection 1.5 Access: The Board and its agents or employees shall have the exclusive right to enter a Lot residence as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the owners in common. Except in an emergency, forty-eight (48) hours notice shall be given to the Owner or occupant.

Section 2 Duties of the Board:

Subsection 2.1 Fidelity Bonds (Insurance): The Board of Directors shall require that all officers, employees, and agents of the Association handling or responsible for Association funds shall furnish an adequate Fidelity bond (or insurance) in an amount not less than \$10,000 per person. The Board shall require of any management agent evidence of coverage of a fidelity bond (or insurance) on himself and his employees paid by the agent to the benefit of his clients exceeding the total amount of depositories of which he and/or his employees are signatories.

Subsection 2.2 Inspection of Records: The membership register, including mailing addresses and telephone numbers books of account, minutes and committee reports shall be available for inspection and copying at a reasonable cost established by the Board by any member or his duly appointed representative at a reasonable time to be established in advance and published in writing by the Board of Directors at the office of the Association or other reasonable place established by the Board.

Subsection 2.3 Books and Financial Statements: The Association shall prepare and distribute to all its members the following documents:

- (a) A pro forma operating budget for the immediately ensuing fiscal year, a copy of which shall be distributed to Lot Owners not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of each fiscal year, which shall contain the following:
 - (1) Estimated revenue and expenses on an accrual basis;
 - (2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Subsection 2.5 of this Article which shall be printed in bold type and include all of the following:
 - A. The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component; and
 - B. As of the end of the fiscal year for which the study is prepared:

- (i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components;
 - (ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components; and
 - (iii) The percentage that accumulated cash reserves actually set aside (ii above) is of the current estimate of cash reserves necessary (I above).
- (3) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.
- (4) A general statement setting forth the procedures used by the Board in the calculation and establishment of those reserves to defray the future repair, replacement or additions to those major components that the Association is obligated to maintain.

The summary of the Association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

- (b) A review of the financial statement of the Association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

- (c) In lieu of the distribution of the pro forma operating budget required by (a) above, the Board of Directors may elect to distribute a summary of the pro forma operating budget to all its members with a written notice (10 point bold type on the front page of the budget) that the budget is available at the business office of the Association or at another suitable location within the Project, and that copies will be provided upon request and at the expense of the Association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the Association shall provide the copy to the member by first-class United States mail at the expense of the Association and delivered within five days.
- (d) In addition to financial statements, the Board shall annually distribute within sixty (60) days prior to the beginning of the fiscal year a statement of the Association's policies and practices in enforcing its lien rights or other legal remedies for default in payment of its assessments against its members.

Subsection 2.4 Reconciliation and Review of Accounts: The Board of Directors shall do the following not less frequently than quarterly:

- (1) Cause a current reconciliation of the Association's operating accounts to be made and review the same; and
- (2) Cause a current reconciliation of the Association's reserve accounts to be made and review the same; and
- (3) Review the current year's actual reserve revenues and expenses compared to the current year's budget; and
- (4) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and
- (5) Review an income and expense statement for the Association's operating and reserve accounts.

Subsection 2.5 Reserves and Reserves Study: Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to

meet the cost of the future repair, replacement or additions to the major components that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two persons who shall either be members of the Board or one officer who is not a member of the Board and a Board member shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the 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. The transferred funds shall be restored to the reserve fund within three years of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a delay is in the best interest of the Project, may delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall not be subject to the limitations imposed by Article V of the Declaration of Covenants, Conditions & Restrictions of the project.

At least once every three years, the Board shall cause a study of the reserve account requirements to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. The Board shall review the 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 study shall, at a minimum, include:

- (1) identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(2) identification of the probable remaining useful life of the components identified in subparagraph (1) above as of the date of the study;

(3) an estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in subparagraph (1) during and at the end of their useful life; and

(4) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain components identified in subparagraph (1) above during and at the end of their useful life, after subtracting total reserve funds as of the date of the study .

As used herein, "reserve accounts" means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain; and "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

Withdrawal of funds from the Association's reserve account shall require the signatures of either (1) two members of the Board of Directors or (2) one member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.

Subsection 2.6 Supervision: The Board shall supervise the officers, agents, and employees of the Association in proper performance of their duties.

Subsection 2.7 Assessments: As more fully provided in the Declaration and subject to any limitations contained therein the Board shall fix the amount of the annual assessment against each lot and send notice to each member of such annual assessment at least sixty (60) days in advance of each assessment period. Failure on the part of the Board to send notice of assessment will not invalidate the obligation of each owner to pay the assessment. The Board shall issue, or cause an appropriate officer to issue, upon demand by any 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.

Subsection 2.8 Collections: The Board shall take appropriate action against any owner who is delinquent in the payment of any assessment by the Association, including, but not limited to commencement of an action against the owner for payment thereof and/or foreclosure of the lien against the Lot of such owner, in accordance with the provisions set forth in the Declaration, Article V, Section 6.

Subsection 2.9 Insurance: The Board shall procure and maintain a comprehensive policy or policies of insurance, in accordance with the provisions of the Declaration, Article IV, Section 1.

Subsection 2.10 Common Area: The Board shall cause the Common Area and any other portions of the Project for which the Association may be responsible to be kept in a good state of maintenance and repair, in accordance with the provisions of the Declaration.

Subsection 2.11 Expenses: The Board shall pay proper expenses, including taxes and assessments of the Association.

Subsection 2.12 Architectural Control: The Board shall assure that the function of the Architectural Control Committee is carried out in accordance with the Declaration and hear appeals therefrom.

Section 3 Board Actions Prohibited: The Board of Directors is prohibited from taking any of the following actions, except with the vote or written assent of the majority of the voting power of the Association residing in members other than the Declarant:

- A. Incurring aggregate expenditures for capital improvements to the Common Area in any year in excess of five percent (5%) of the budgeted gross expenses of the Association for that year.
- B. Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

- C. Paying compensation to Directors or Officers of the Association for services performed in the conduct of the Association business. The Board of Directors may cause a Director, Officer, or a member to be reimbursed for reasonable expenses actually incurred in carrying out the business of the Association.

ARTICLE VI:

OFFICERS AND THEIR DUTIES

Section 1 Enumeration of Officers: The officers of this Association shall be a president, vice-president, secretary, and chief financial officer who shall at all times be members of the Board of Directors.

Section 2 Election: The election of officers shall take place at the first meeting of the Board immediately following their election.

Section 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 shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 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.

Section 5 Resignation and Removal: Any officer may be removed from office by the Board with or without cause. 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.

Section 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 replaced.

Section 7 Duties: The duties of the officers are as follows:

A. **President:** The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, checks and promissory notes.

B. **Vice-President:** The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board.

C. **Secretary:** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

D. **Chief Financial Officer:** The chief financial officer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association shall keep proper books of account; shall prepare and shall distribute financial statements to each member as outlined in Article 5, Section 2.3 of these By-laws.

Section 8 Delegation: The above outlined duties may be delegated by a resolution of the Board to a manager appointed by the Board.

ARTICLE VII:

COMMITTEES

Section 1 Appointment: Committees shall be established by the Board of Directors.

Section 2 Chairpersons: Committee chairpersons are to be appointed by and are to serve at the pleasure of the Board.

Section 3 Members: Members of the Committee are to be appointed by and are to serve at the pleasure of the Board.

Section 4 Duties: Committee duties are to be defined by the Board.

Section 5 Committees Enumerated:

A. Architectural Control Committee: As more full defined in Article VIII of the Declaration, the Association shall have an Architectural Control Committee.

B. Nominating Committee: The Nominating Committee may consist of a chairperson who shall always be a Director, and two members who shall always be members. The Nominating Committee may make as many nominations for Directors prior to the Annual Meeting as it determines necessary but in no event less than the number of vacancies on the Board.

C. Other Committees: Other committees may be established from time to time by the Board.

ARTICLE VIII:

INSPECTION OF ASSOCIATION BOOKS AND RECORDS

(a) Commencing not later than ninety (90) days after the close of escrow of the first Lot within the project, copies of the documents listed below, as soon as readily obtainable, shall be delivered by the Declarant (or its representative) to the Board of Directors at the office of the Association, or at such other place as the Board of Directors shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last Lot within the project or (2) three years after the expiration of the most recent final subdivision public report on the project:

- (1) The recorded subdivision map for the project;
- (2) The deeds and easements executed by the Declarant conveying the common area or other interest to the Association, to the extent applicable;
- (3) The recorded Declaration of Covenants, Conditions, and Restrictions for the project, including all amendments and annexations thereto;
- (4) The Association's filed Articles of Incorporation and all amendments thereto;
- (5) The Association's By-laws and all amendments thereto;
- (6) All architectural guidelines and all other rules regulating the use of an owner's interest in the project or use of the common area which have been promulgated by the Association;
- (7) The plans approved by the City of Morgan Hill for the improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy;
- (8) All notice of completion certificates issued for the common area improvement (other than residential structures);
- (9) Any bond or other security device in which the Association is the beneficiary;
- (10) Any written warranty being transferred to the Association for common area equipment, fixtures or improvements;

(11) Any insurance policy procured for the benefit of the Association, its Board of Directors or the common area;

(12) Any lease or contract to which the Association is a party;

(13) The membership register (including names, addresses and telephone numbers), books of account and minutes of meetings of the members of the Board, and of committees of the Board;

(14) Any instrument not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of members of the Association.

(b) Commencing not later than ninety (90) days after the annexation of additional phases to the project, copies of those documents listed under subsection (a) which are applicable to that phase, shall, as soon as readily available, be delivered by the Declarant to the Board of Directors at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed in subsection (a) shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last lot covered by a subdivision public report or (2) three years after the expiration of the most recent public report on the project.

(c) The membership register (including names, addresses and telephone numbers), books of account and minutes of meetings of the members of the Board, and of committees of the Board shall be made available for inspection and copying by any member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the project as the Board shall prescribe.

(d) (1) In the case of the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board of Directors, other than an executive session, shall be available to members within thirty (30) days of the meeting and shall be distributed to only members upon request and payment of the fee prescribed in (e) (3) below.

(2) Members of the Association shall be notified in writing at the time the pro forma budget required by Article V, Subsection 2.3 of these By-laws is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board of Directors and how and where those minutes may be obtained and the cost of obtaining such copies.

(e) The Board of Directors shall establish reasonable rules with respect to :

- (1) Notice to be given to the custodian of the records by the member of the Association desiring to make inspection;
- (2) Hours and days of the week when such an inspection may be made; and
- (3) Payment of the cost of reproducing copies of documents requested by a member of the Association.

(f) Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

ARTICLE IX

AMENDMENTS

Prior to close of escrow on the sale of the first Lot, Declarant may amend these By-Laws (providing any amendments constituting a material change shall require the approval of the Department of Real Estate). After sale of the first Lot, these By-Laws may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of a quorum of the Association and a majority of the votes or written consent of members other than Declarant, or where the two (2) class voting structure is still in effect, by vote of a majority of each class of members. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

ARTICLE X

MISCELLANEOUS

Section 1 Fiscal Year: The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2 Corporate Seal: The Association may have a seal in circular form having within its circumference the name of the Association, its date of incorporation, and the state in which it is incorporated.

Section 3 Conflict: In case any of these By-Laws conflict with any provisions of the laws of the State of California, such conflicting By-Law shall be null and void, but all other By-Laws shall remain in full force and effect. In case these By-Laws conflict with the provisions of the Declaration of Covenants, Conditions, and Restrictions, the Declaration shall control these By-Laws. In case these By-Laws conflict with the provisions of the Articles of Incorporation, such Articles of Incorporation shall control.

Section 4 Mortgagees:

A. Notice to Association: An owner who mortgages or homesteads his Lot, shall notify the Association through the Management Agent, if any, or the President of the Association in the event there is no Management Agent, of the name and address of his mortgagees, and the Association shall maintain such information. Any such owner shall likewise notify the Association as to the release or discharge of any such mortgage or homestead.

B. Notice of Unpaid Assessments: The Association shall at the request of a mortgagee of a Lot report any unpaid assessments due from the owner of such Lot.

Section 5 Owner's Address: It shall be the responsibility of each Lot Owner to maintain a current address on file with the secretary of the Association. Association notices and correspondences shall be sent to such address.

Section 6 Disclosures:

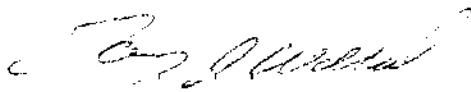
- (1) The Association must give not less than 30 to no more than 60 days advance notice of any increase in regular or special assessments.
- (2) The following shall be given to prospective purchasers:
 - (a) Written disclosure of the amount of the Association's current regular and special assessments which are unpaid as of the date of the statement;
 - (b) True information as to late charges, interest and collection costs which are or may become a lien on the Lot; and
 - (c) Any changes in the assessments or fees which have been approved by the Board of Directors, but not yet due or payable on the disclosure date.

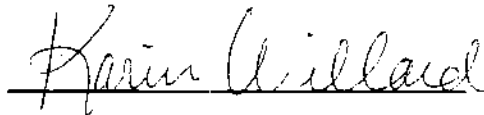
We, the undersigned, being all of the Directors of the Heritage Greens of Morgan Hill Owners' Association, do hereby certify:

That we are entitled to exercise all of the voting power of said association;

That we hereby assent to the within and foregoing By-Laws and hereby adopt the same as the By-Laws of said Association.

IN WITNESS WHEREOF, we have subscribed our names this ?? day of October, 1996.


Gary Willard


Karin Willard

CERTIFICATION

I, the undersigned, do hereby certify that I am duly elected and acting Secretary of the Heritage Greens of Morgan Hill Owners' Association, a California corporation, and that the foregoing By-Laws constitute the original By-Laws of said corporation as duly adopted at a meeting of the Board of Directors thereof.

Karin Willard
Secretary