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16275 MONTEREY RD. SUITE K  
MORGAN HILL, CA 95037

"Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons"

**DECLARATION  
OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
OF  
HERITAGE GREENS OF MORGAN HILL  
A PLANNED DEVELOPMENT  
TRACT NO. 8809**

~~WHEN RECORDED MAIL TO:~~

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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

OF

HERITAGE GREENS OF MORGAN HILL -

A PLANNED DEVELOPMENT

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

HERITAGE GREENS OF MORGAN HILL -

A PLANNED DEVELOPMENT

THIS DECLARATION is made on the date hereinafter set forth by LJW ENTERPRISES, INC., A CALIFORNIA CORPORATION (hereinafter called "Declarant").

WHEREAS, Declarant is the owner of all that certain real property located in the City of Morgan Hill, County of Santa Clara, State of California, more particularly described as follows:

Lots 1-20, inclusive, and Common Area Parcels A & B, as shown upon the Subdivision Map of Tract No. 8809, filed in Book 676 of Maps at page 48, Official Records of Santa Clara County, State of California, on May 14, 1996 (hereinafter referred to as "the Map").

WHEREAS, it is Declarant's intention to impose upon the property mutually beneficial restrictions as a planned development as defined in California Civil Code Section 1351 (k) under a common scheme for the improvement, maintenance and benefit of all of said lots and the owners thereof; and

WHEREAS, Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates, consisting of those certain parcels of land together with those single-family residential improvements thereon as well as the "common area" as hereafter defined.

NOW THEREFORE, Declarant hereby declares that the property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Project and every part thereof. All of the limitations, covenants,

restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title, or interest therein or any part thereof, and shall be for the benefit of each owner of any portion of said Project or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest.

## ARTICLE I

### DEFINITIONS

1. The "Association" means the Heritage Greens of Morgan Hill Owners' Association, a non-profit mutual benefit corporation, membership in which shall be limited to owners (as hereinafter defined) and in which all owners have a membership interest.
2. "Beneficiary" means and refers to a mortgagee under a mortgage or a beneficiary under a deed of trust encumbering a lot, as hereafter defined.
3. "Board" or "Board of Directors" means the governing body of the Association.
4. "By-Laws" shall mean the By-laws of the Association which are or shall be adopted by the Board.
5. "Common Area" means the areas designated as Parcels A & B, and any other real property owned by or held in trust for the benefit of the Association for the common use and enjoyment of its members, but does not include real property over which the Association has only an easement.
6. "Declarant" means and refers to LJW Enterprises, Inc., a California Corporation, and any successor(s) in interest of Declarant, if (i) such successor(s) in interest acquires all or any portion of Declarant's interest in the Project for the purposes of development, sale, and/or rental and (ii) a certificate, signed by Declarant, has been recorded in the County in which the successor(s) in interest assumes the rights and duties of Declarant to the portion of the Project so acquired. There may therefore be more than one Declarant.
7. "Declaration" means and refers to the within the Declaration of Covenants, Conditions and Restrictions.

8. "Director" means and refers to a member of the Board of Directors.
9. "Eligible Mortgage Holder" means and refers to those holders of a first mortgage on a Lot who have requested the Association to notify them on any proposed action that requires the consent of a specified percentage of eligible mortgage holders .
10. "Institutional Lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded first mortgage on any Lot.
11. "Lots" mean those certain parcels of land together with the single-family residential improvements attached thereto, described as Lots 1-20, inclusive, on the Map of Tract No. 8809, Santa Clara County, State of California, and any additional lots annexed to the Heritage Greens project.
12. "Map" refers to that certain Subdivision Map entitled "Tract No. 8809" filed in Book 676 of Maps at page 48, Official Records of Santa Clara County, on May 14, 1996.
13. "Member" means and refers to those lot owners who are members of the Association pursuant to Article III hereof.
14. "Mortgage" means a deed of trust as well as a mortgage.
15. "Mortgagee" means a beneficiary under or holder of a deed of trust as well as a mortgage.
16. "Owner" or "Owners" mean the record owner or owners, whether one or more persons or entities, of a fee simple title to a lot, and a contract vendee of a Lot, but excluding any person or entity having such interest merely as security for the performance of an obligation.
17. "Project" and "Property" means the entire parcel of real property described above, and such additions thereto as may later be brought within the jurisdiction of the Association.
18. "Public Report" or "Final Subdivision Public Report" means the public report(s) issued for the project by the California Department of Real Estate pursuant to the provisions of the California Business and Professions Code Sections 11000 et. seq.
19. "Restricted (exclusive use) common area", if any, means and refers to those portions of the common area set aside for exclusive use of one or more lot owner(s), as hereinafter set forth.
20. "Rules" means the Rules adopted by the Association pursuant to this Declaration.

## ARTICLE II

### DESCRIPTION OF PROJECT, ANNEXATION, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

Section 1 Property Subject to Declaration: Lots 1-20, inclusive, and Common Area Parcels A & B, as shown on the Subdivision Map of Tract No. 8809, Santa Clara County, are hereby declared to be subject to this Declaration.

Section 2. Annexation: Additional phases may be annexed to and become subject to this Declaration by any of the following methods set forth in this Section. Upon annexation, additional phases shall become subject to this Declaration without the necessity of amending individual sections hereof.

A. Annexation pursuant to Plan: The property described as Lots 1-10, inclusive, and Common Area Parcel \_\_\_ within the resubdivided Parcel C of the Subdivision Map of Tract No. 8809 (Phase II), may be annexed to and become part of the project, subject to this Declaration, and subject to the jurisdiction of the Association without the assent of the Association or its members, on condition that:

(1) Date for Annexation: Any annexation pursuant to this section shall be made prior to the third anniversary of the issuance of the original public report for the immediately preceding phase of the project.

(2) Plan Approved: The annexation and development of additional parcels shall be in accordance with a plan of development approved by the Department of Real Estate of the State of California.

(3) Declaration of Annexation: A Declaration of Annexation shall be recorded covering the applicable portion of the property to be annexed. Said Declaration may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this Declaration. The Declarant shall make a written commitment, at or before the time any annexation document is recorded, to pay to the Association, concurrently with the first conveyance of a lot in an annexed phase, appropriate amounts for reserves for replacement or deferred maintenance of common area improvements in the annexed phases necessitated by or arising out of the use and occupancy of residences under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of the first conveyance of a lot in the annexed phase.

B. Annexation Pursuant to Approval: Upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of its members, other than the Declarant, the Association and the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation in the manner described in Section A. 3.

C. Effect of Annexation: Upon such annexation becoming effective, all of the property so annexed shall become subject to the recorded Declaration and any amendments thereto describing such property, Articles, By-Laws and current Rules of the Association, with the same force and effect as if the annexed property was originally a part of the property described herein.

Voting specifications set forth in the Declaration, Bylaws, and Articles shall apply to the entire number of votes of all annexed phases.

Assessments collected from owners of the property may be expended by the Association without regard to the particular phase from which such assessments came. All owners shall have ingress and egress to and use of all portions of the common areas throughout the project, subject to the provisions of this Declaration, the By-laws, the Articles, and the Rules of the Association currently in effect.

D. Quality of Construction: Future Improvements to the project will be consistent with initial improvements in terms of quality of construction.

Section 3 Partition Prohibited: The Common Areas will remain undivided as set forth above. No owner shall bring any action for partition. It is agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the project.

Judicial partition by sale of a single lot owned by two or more persons and division of the sale proceeds is not prohibited hereby but physical partition of a single lot is prohibited.

Section 4 Common Area Ownership: Declarant shall convey to the Association the fee simple title to the Common Area Parcels free and clear of all liens and encumbrances, except current real property taxes, which taxes shall be pro-rated to date of transfer and reservations, easements, covenants, conditions and restrictions, then of record, including those set forth in the covenants, conditions and restrictions for the Association. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and

shall pass with the title to every Lot subject to the provisions in this Declaration.

Declarant hereby reserves such easements and cross-easements for use of and passage through the Common Areas as may be necessary for the benefit of lot owners in any subsequent phases of the Project.

Section 5 Restricted (Exclusive Use) Common Area(s):

Notwithstanding any other provision in this Declaration, the internal and external telephone wiring designed to serve a separate Lot, but located outside the boundaries of the Lot, are restricted (exclusive use) Common Areas allocated exclusively to that particular Lot.

A Lot owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining the internal and external telephone wiring made part of a restricted (exclusive use) Common Area pursuant to this section. Such access shall be subject to the consent of the Board of Directors of the Association, whose approval shall not be unreasonably withheld, and which may include the Board's approval of telephone wiring upon the exterior of the Common Area, and other conditions as the Board determines reasonable.

ARTICLE III

HOMEOWNERS ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1 Organization: The Association is a Non-Profit Mutual Benefit Corporation charged with the duties and empowered with the rights set forth herein and in the By-Laws and Articles of Incorporation. Its affairs shall be governed by this Declaration, the Articles, the By-Laws and the Rules of the Association. In the event that the Association as a corporate entity is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association. The affairs of such unincorporated association will be governed by the laws of the State of California and, to the extent consistent therewith, by this Declaration, the Articles and the By-Laws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association.

Section 2 Membership: The owner of a Lot shall automatically, upon taking title to a Lot, be a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association will automatically cease. Membership is to be held in accordance with the Articles and By-Laws of the Association.

Section 3 Transferred Membership: Membership in the Association may not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such a Lot. A mortgagee does not have membership rights until he becomes an owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void.

Section 4 Voting Classes: The Association shall have two (2) classes of voting membership:

- (1) Class A: Class A members shall be all owners with the exception of the Declarant, and Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an ownership interest in any Lot all such persons shall be members; provided, however, that with respect to any matter requiring the vote or consent of members, no more than one vote shall be cast with respect to any Lot. The vote for such Lot shall be exercised as the members holding an interest in such lot among themselves determine. In the event of disagreement, the decision of members holding a majority of interest in such Lot shall govern. In the event two or more persons have equal interests in a Lot, the vote shall be determined by a coin flip.
- (2) Class B: The Class B member(s) shall be the Declarant, and Declarant shall be entitled to three (3) votes for each Lot owned. the Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:
  1. the second anniversary of the first conveyance of a Lot within the most recent phase of the project;
  2. the fourth anniversary of the first conveyance of a Lot within the Heritage Greens of Morgan Hill project.

Any action by the Association (with the exception of enforcing a bond) which must have the approval of the members other than the Declarant before being undertaken shall 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.

Voting rights attributable to Lot ownership shall not be vested until assessments against the particular Lot have been levied by the Association.

Section 5 Voting Procedures and Meetings: Voting procedures and the notice, quorum requirements and location of meetings of the Association shall be as provided for in the By-Laws.

Section 6 Board of Directors: The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly is reserved herein to a vote of the Members. The initial Board of the Association consisting of three (3) Directors shall be appointed by Declarant. Such Board shall hold office until the first regular meeting of the members is held pursuant to the By-Laws. At said meeting a new Board of five (5) Directors shall be elected by secret written ballot to serve until the next regular annual meeting of the Association members or until their successors are elected. The number of Directors may be changed by amendment of the By-Laws.

## ARTICLE IV

### DUTIES AND POWERS OF THE ASSOCIATION

Section 1 Duties: In addition to the duties enumerated in its By-Laws or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

Subsection 1.1 Duties of Association With Respect to Maintenance of Common Area and Individually Owned Lots: The Association shall replace, repair and maintain in good repair the Common Area including but not limited to, the recreation area(s), any fences located on the Common Area, the landscaped areas, any lighting facilities within the Common Area which are not connected to the utilities of privately-owned lots, all on-site sanitary sewers, and any drainage or other improvements, utilities and facilities located upon the Common Area.

Landscaping and irrigation systems serving the Common Area that are required to be installed in the public right-of-way on the perimeter of the project shall be continuously maintained by the Owners' Association.

Subsection 1.2 Repair and Maintenance of Common Area Damaged by Pests and Organisms: The Association shall be responsible for repairing, replacing, or maintaining the Common Area, other than exclusive use common areas, with respect to any damage caused by the presence of wood-destroying pests or organisms.

Each owner of a Lot shall bear the costs of any damage to his Lot or residence caused by the presence of wood-destroying pests or organisms. However, by a majority vote of all Lot owners, such responsibility may be delegated to the association which in turn may levy a special assessment to recover such costs. If such a vote is taken, and the Association assumes responsibility for such maintenance and repair, the following shall apply:

(1) The Association may cause the temporary summary removal of any occupant of a Lot for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms; and

(2) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the individual Lot owner; and

(3) The Association shall give notice of the need to temporarily vacate a Lot to the occupants and to the owner(s), not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of the treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation; and

(4) Notice by the Association shall be deemed complete upon either personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association or by sending a copy of the notice to the occupants at the Lot address and a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid, at the most current address shown on the books of the Association.

For purposes of the above sections, "occupant" means an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession of the Lot residence.

Subsection 1.3 Insurance: The Association (or Declarant until the election of the first Board) shall purchase and maintain certain insurance policies and the following shall apply with respect to insurance:

(a) The Association shall purchase and maintain a master blanket comprehensive liability bodily injury and property damage policy insuring the interests of the Board and the Owners against public liability as a result of their ownership of the Common Area with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence (such limits and coverage shall be reviewed at least annually by the Board and increased at its discretion). Such policy shall be maintained with respect to any common area(s) owned in common by the Owners.

Such liability insurance shall not cover the personal bodily injury and property damage exposure of each Owner within his lot or, in any other lot in the development or upon any common area resulting from the negligence of the Owner. Obtaining such insurance coverage by each Owner is optional.

(b) In accordance with California Civil Code Section 1365, the Association shall notify each Owner annually as to the amount and type of general liability as well as directors and officers insurance carried, all the required information regarding such policy, and whether such coverage complies with the levels specified by California law.

If the Association's insurance is not in compliance with California law, each Owner may be individually liable for the entire amount of a judgment against the Association. If the insurance complies with the levels specified by California law, each owner may be individually liable only for their proportionate share of assessments levied to pay for the amount of any judgment which exceeds the limits of the Association's insurance.

(c) Workers' Compensation Insurance shall at all times be carried as required by law with respect to the employees, if any, of the Association.

(d) The Association shall purchase and maintain a fidelity bond or insurance covering loss or theft of funds, naming the Manager and other persons as may be designated by Declarant as principals and the Owners as obligees in an amount equal to at least the sum of three months' assessments on all lots within the project. Separate bank accounts should be maintained for the working and reserve accounts, or any management company must maintain separate records and bank accounts for each owners' association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the owners' association, or two Board members must sign any checks written on the reserve account.

(e) Should the Board, despite its reasonable efforts to do so, be unable to obtain insurance coverage meeting all of the specifications set forth above, it shall observe such specifications as closely as possible, and where forms of coverage or insuring agreement specified above are unavailable, the Board shall substitute available forms of coverage and insuring agreements which in its judgment are the nearest equivalent to those specified.

(f) Proceeds of all insurance policies owned by the Association shall be received by the Association, held in a separate account and distributed to the Association and the Owners and their mortgagees subject to the provisions of this Declaration as their interest may appear; provided, however, whenever repair or reconstruction is required

the proceeds of any insurance received by the Association as a result of any loss shall be applied to such repair or reconstruction. Upon the vote or written assent of a majority of the voting power of the Association residing in members other than Declarant, the Board shall levy a special assessment against all Owners to make up for any deficiency in making necessary repairs or reconstruction.

(g) Each Owner shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the Master Policy. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to collect proceeds and to distribute the same to the Association, the Owners and their respective mortgagees (subject to the provisions of this Declaration) as their interests may appear, to execute releases of liability and to execute documents and to do all things on behalf of the Owners as shall be necessary or convenient to the accomplishment of the foregoing, and any insurer may deal exclusively with the Association in regard to such matters. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any residence nor the liability of any Owner for occurrences therein not caused by or connected with the Association's operation, maintenance, or use of the common area.

Subsection 1.4 Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Areas, and charge the cost thereof to the member or members responsible for the existence of said lien. Prior to any Board decision to discharge a lien, the Owner shall be given written notice and an opportunity for a hearing before the Board in order to present any defenses which may exist.

Subsection 1.5 Assessments: The Association shall fix, collect and enforce assessments as set forth in Article V hereof.

Subsection 1.6 Payment of Expenses: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

Subsection 1.7 Enforcement: The Association shall enforce this Declaration, the By-laws, and the Articles of Incorporation.

Subsection 1.8 Budget and Annual Report: The Board shall prepare and maintain books, financial statements, etc. in accordance with the provision of the By-laws.

Section 2 Powers: In addition to the powers enumerated in its Articles and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

Subsection 2.1 Easements: The Association shall have authority to grant easements where necessary for utilities and sewer facilities over the Common Area(s) to serve the Common Area(s) and the Lots.

Subsection 2.2 Access: The Board and its agents or employees shall have the exclusive right to enter a Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or owners in common. Except in case of emergency, forty-eight (48) hours notice shall be given to the Owner or occupant.

Subsection 2.3 Manager: The Association shall have the authority to employ a manager or other persons and to hire independent contractors or employees to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a firm or person appointed as a manager or managing agent, or any contract providing for services by the developer, sponsor or builder, shall not exceed a one (1) year term, shall provide for termination by either party without cause on ninety (90) days written notice, and shall provide for the right of the Association to terminate the same for cause on thirty (30) days written notice.

Subsection 2.4 Association Rules: The Board may, from time to time, and subject to the provisions of this Declaration, adopt such Rules as the Board may deem necessary for the management of the Project in accordance with the provisions of the By-laws.

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

Subsection 2.5 Enforcement of Rules and Restrictions: The Board shall have the power, obligation and duty to enforce the provisions of this Declaration, the By-Laws and the Rules. In the event of a breach of any of the restrictions contained in this Declaration or of any Rules by an Owner, his family, guests, employees, invitees, licensees or tenants, the Board may enforce the obligations of each Owner to obey such Rules or restrictions in any manner provided by law or in equity, including but not limited to, appropriate legal action, suspension of the Owner's voting right and right to use the common facilities of the Project; provided, however, such suspension may not be for a period in excess of thirty (30) days, and may not be imposed without notice and hearing as herein provided, for an infraction of such Rules. In addition to the other remedies herein set forth, the Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as herein provided. The right to levy fines, hold disciplinary

hearings or otherwise impose discipline on members under this section is vested solely in the Board and may not be delegated to any Director, officer, or manager or other employees of the Board or Declarant.

Prior to making any decision that a breach has occurred or to impose any penalty provided herein for breach of any Rules enacted hereunder or restrictions in this Declaration, the Board shall send written notice to the Lot Owner, at least fifteen (15) days prior to any discipline to be imposed, which contains the reasons for the imposition of possible discipline, the nature of the infraction and provide an opportunity to the Lot Owner for a hearing before the Board not less than five (5) days before the effective date of the imposition of any discipline. In the event that the Board determines that an infraction has occurred and that a penalty shall be imposed, the determination of the Board shall be final.

Notwithstanding anything to the contrary in this Declaration, neither the Board nor the Association of Members shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot including access thereto over and across the Common Area, because of such Owner's failure to comply with the provisions of this Declaration or of the By-Laws or any Rules adopted by the Association except when such loss or forfeiture is the result of a judgment of a court, a decision out of arbitration or on account of a foreclosure, or under the power of sale granted herein for failure of the Owner to pay the assessments levied pursuant to the provisions of this Declaration. In the event legal action is instituted by the Board pursuant to this section, any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member was allegedly responsible or in bringing the member and his lot into compliance with this Declaration may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's lot enforceable by a sale of the lot.

The provisions of the above paragraph do not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Subsection 2.6 Acquisition of Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association. However, except with the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant, the Board is prohibited from (1) incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and (2) 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.

Subsection 2.7 Loans: The Association shall have the power to borrow money and, with the vote or written consent of three-fourths (3/4) of each class of members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Subsection 2.8 Dedication: The Association shall have the power to dedicate, sell or transfer all or any part of the common area to any public agency, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by three-fourths (3/4) of each class of members, other than the Declarant or three-fourths (3/4) of the total voting membership other than Declarant after conversion to a single class of members, agreeing to such dedication, sale or transfer.

Subsection 2.9 Contracts: The Association shall have the power to contract for goods and/or services for the Common Area(s), for the common facilities or interests of the owners or for the Association, subject to limitations elsewhere set forth in this Declaration or the By-laws.

Subsection 2.10 Delegation: The Association shall have the power to delegate its authority and powers to committees, officers or employees of the Association. However, the authority to levy fines, hold hearings, impose discipline, make capital expenditures, file suit on behalf of the Association, record a claim of lien or institute foreclosure proceedings for failure to pay assessments, may not be delegated to an officer, employee or committee.

Subsection 2.11 Power of Attorney: Each owner, for himself, his successors and assigns, shall be deemed upon purchasing his Lot to have appointed the officers of the Association, or any of them, as his true and lawful attorney, in his name, place and stead, to prosecute, settle

and/or release any claims arising out of the owner's acquisition and/or joint ownership of the common areas of the project. Such power shall be utilized only upon express authorization of the Board given by resolution adopted by the Board at a meeting for which all members are given advance written notice specifying the nature of the proposed action for which the power of attorney is to be utilized.

## ARTICLE V

### ASSESSMENTS

Section 1 Covenants for Maintenance Assessments: Declarant hereby covenants and agrees for each Lot owned by it within the Project, and each Owner of any Lot by acceptance of a deed is deemed to covenant and agree, to pay to the Association the assessments levied pursuant to this Article. Declarant and each Owner thereby vest in the Association the right to bring all actions for the collection of such charges and for the enforcement of the lien created hereby. Such right remains with the Association and such obligations run with the land so that each successive Owner or Owners of record of a Lot in the Project will become liable to pay all assessments which become a lien during the time they are the record Owner of any Lot in the Project.

Each assessment levied by the Association under this Article constitutes a separate assessment.. Each assessment, together with interest thereon, costs of collection and reasonable attorneys' fees, will be a charge on the Lot and be a continuing lien upon the Lot against which such assessment is made. The Association, as the agent of all Lot Owners, has a separate lien and a separate lien with power of sale is hereby created, upon each Lot against which an assessment is made to secure the payment of any assessments under this Article. Each such lien for any particular month's charge will also secure interest thereon, if the same is not paid when due, and costs of suit and reasonable attorneys' fees to be fixed by the court if action or suit is brought to collect such charge. The priority of all such liens shall be in inverse order so that upon foreclosure of the lien for a particular month's charge, any foreclosure sale pursuant thereto will be made subject to all liens securing the respective monthly charge on such Lot for succeeding months.

Each assessment, together with interest, attorneys' fees and costs of collection, shall also be a separate, distinct and personal obligation (debt) of the Owner of the Lot at the time when the assessment is

levied. The personal obligation for delinquent assessments will not pass to a Lot Owner's successor in title unless expressly assumed by such successor, but the lien for such delinquent assessment shall remain and, if unpaid by such successive Lot Owner, may be foreclosed as provided in this Declaration. After a record Owner transfers record title to his Lot he will not be liable for any charge thereafter assessed against such Lot. A contract seller of any Lot will continue to be liable for all such charges until a conveyance by him of the Lot subject to the assessment is recorded in the Office of the Santa Clara County Recorder.

Section 2 Regular Monthly Assessments: The Board shall establish regular monthly assessments for operation and maintenance of the Project by the procedures established in this Section. The assessments for any Lot in a particular phase shall be due and payable in monthly installments on the first day of each month commencing on the first day of the first month following conveyance of the first Lot within that particular phase of the Project.

Regular assessments shall be levied in equal amounts against all Lots.

The Association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

The Association shall provide notice by first-class mail to the Lot owners of any increase in regular assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Declarant and any owner of a subdivision interest which does not include a structural improvement for human occupancy may defer that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. The exemption may include, but shall not necessarily be limited to: roof replacement, exterior maintenance, walkway and carport lighting, refuse disposal, cable television, and domestic water supplied to living units.

Any exemption from the payment of assessments attributed to residences shall be in effect only until the earliest of the following events:

- (A) A notice of completion of the residences has been recorded;
- (B) Occupation or use of the dwelling unit;
- (C) Completion of all elements of the residences which the Association is obligated to maintain.

Declarant and any owner of a subdivision interest may defer the payment of any portion of assessments which are for the purpose of defraying expenses and reserves directly attributable to the existence and use of

a common facility that is not complete at the time assessments commence. Any exemption from the payment of assessments attributed to common facilities shall be in effect only until the earliest of the following to occur:

- (1) A notice of completion of the common facility has been recorded; or
- (2) The common facility has been placed into use.

Not less than sixty (60) days prior to the beginning of each fiscal year, the Board shall estimate the total charges to be paid out of the maintenance fund during such year (including a reasonable reserve for contingencies) and distribute a copy of a pro forma operating statement (budget) to each member. All funds budgeted, allocated, assessed and collected for deferred maintenance and capital improvements shall be designated and used solely for those specific purposes.

The Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant.

The above paragraph does not limit assessment increases necessary for emergency situations, which are defined as extraordinary expenses:

- (1) required by an order of a court; or
- (2) necessary to repair or maintain the Project or its Common Area (s) where a threat to personal safety within the Project is discovered; or
- (3) necessary to repair or maintain the Project or its Common Area(s) that could not have been reasonably foreseen by the Board in preparing and distributing its pro forma operating budget pursuant to the By-laws of the Association. However, prior to the imposition or collection of an assessment under this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

Within one hundred and twenty (120) days after the end of each fiscal year, the owners shall receive an accounting of assessment receipts and disbursements for that fiscal year.

Section 3 Special Assessments: In addition to the regular assessments authorized herein, the Board may levy, in any fiscal year, a special assessment applicable to that year for capital improvements, correction of inadequacy of the maintenance fund, defraying, in whole or in part, the cost of any construction or unexpected repair or replacement of improvements in the common area and such other matters as the Board may

deem appropriate; provided, however, that in any fiscal year the Board may not, impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses for that fiscal year without the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant. This section does not limit assessment increases necessary for "emergency situations" as defined in Section 2 of this Article. Any such special assessment shall be levied among all Lots in equal amounts.

The Association shall provide notice by first-class mail to the owners of the separate subdivision interests of any increase in the regular or special assessments of the Association, not less than thirty nor more than sixty days prior to the increased assessment becoming due.

Section 4 Reimbursement Charges: The Board shall levy a reimbursement charge against any Owner and the Lot owned by such Owner whose failure to comply with this Declaration, the By-Laws or the Rules has necessitated an expenditure of monies by the Association from the maintenance fund to bring such Owner and Lot into compliance with said instruments or in otherwise performing its functions under this Declaration. Such charge shall be for the purpose of reimbursing the Association and shall be due and payable to the Association when levied.

Section 5 Non-Waiver of Assessments: The omission by the Board, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Lot Owner from the obligations to pay the assessments, or any installment thereof, for that or any subsequent year. In the instance of such omission, the assessment fixed for the preceding year shall continue until a new assessment is fixed. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area, abandonment of the Lot or any attempt to renounce rights in the common area.

Section 6 Enforcement: Each Owner of a Lot, upon becoming such Owner, shall be deemed to covenant and agree to pay to the Association every assessment provided for in this Declaration and shall be deemed to agree to the enforcement of all such assessments in the manner specified herein. Any imposition of a late charge levied by the Association for the delinquent payment of regular and special assessments to defray expenses and "enforcement" assessments or penalties imposed upon an Owner for failure to comply with this Declaration, the By-laws, or Rules, shall be subject to the provisions of the California Civil Code Sections 1366-67. In the event an attorney is employed for collection of any assessment or to enforce compliance with the terms and conditions of this Declaration, each Lot Owner agrees to pay reasonable attorneys' fees and any other costs thereby incurred, in addition to any other amounts due or any other relief or remedy to which the Association is

entitled. Any assessment not paid when due will be deemed to be delinquent. Any assessment not paid within thirty (30) days after the date on which it becomes due shall thereafter earn interest from the date of delinquency at the maximum rate permitted by Civil Code Section 1366(c)3. In addition to any other remedies herein or by law provided, the Association, or its representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, in any manner provided by law or in equity, by either or both of the following procedures.

Subsection 6.1 Enforcement by Suit: The Association may commence and maintain a suit at law against any Lot Owner or Owners personally obligated to pay assessments for such delinquent assessments and such suit will be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon, costs of collection, court costs and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Lot Owner. Suit to recover judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien provided for in the following Subsection. The Association may not recover more than once in connection with a single delinquent assessment.

Subsection 6.2 Enforcement by Lien: The amount of any assessment levied pursuant to this Declaration, plus any costs of collection, late charges, and interest thereon, shall be a lien on an owner's Lot from and after the time the Association causes a Notice of Delinquent Assessment, containing the name and address of the trustee for foreclosure of the lien and signed by the Board or its designated representative (or any Lot Owner if the Board fails or refuses to act), to be recorded in the Office of the Santa Clara County Recorder.

No action shall be brought to foreclose the lien securing an unpaid assessment until the Notice of Delinquent Assessment has been delivered to the Owner of the Lot subject to such assessment and notice recorded in the Office of the Santa Clara County Recorder. Said notice shall state the amount of the assessment together with the interest, costs and reasonable attorneys' fees, a description of the Lot against which the assessment has been made and the name or names of the record Owner or Owners thereof. After the expiration of thirty (30) days from the date such Notice of Delinquent Assessment has been recorded, an action may be commenced in the name of the Association to foreclose the lien, or such action may be commenced by any Owner if the Association fails or refuses to act. Upon the declaration of an assessment and the recording of notice thereof, the Association may, at its option, declare the entire balance of all sums then due from the Owner due and payable, which total sum may then be included in any suit, action or proceeding brought to collect said sum, including all costs, charges and attorneys' fees.

Notwithstanding anything contained in this Declaration to the contrary, compliance must be made with Civil Code Sections 1366- 67, and no action may be brought to foreclose the lien created hereunder, whether judicially, by power of sale or otherwise, until the expiration of ten (10) days after a copy of said Notice of Delinquent Assessment, showing the date of recordation thereof, has been mailed to the Owner of the Lot which is described in such Notice.

Each Owner does hereby waive, to the extent of any liens created pursuant to the Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of California now in effect, or in effect in the future.

Section 7 Power of Foreclosure and Sale: Each of the Lot Owners does hereby appoint the Association, as trustee, to enforce any lien created pursuant to this Declaration and to foreclose such lien by means of any available current California statute, as such statutes may be revised, amended or altered from time to time, or by judicial foreclosure, and does further grant the Association, as such trustee, the power to sell the Lot of any such defaulting Owner, or any part thereof, for lawful money of the United States, to the highest bidder to satisfy such lien.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all Lot Owners and shall secure payment of all sums set forth in the Notice of Delinquent Assessment together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said Notice of Assessment. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

Section 8 Transfer of Lot by Sale or Foreclosure: Sale or transfer of any Lot shall not affect the assessment lien. However, the sale of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Where the mortgagee of a first mortgage of record or other purchaser of a Lot obtains title to the same as a result of foreclosure of any such first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer (except for assessment liens recorded prior to the mortgage). No amendment of the preceding

sentence may be made without the consent of institutional lenders in accordance with the provisions of Article IX of this Declaration. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots including such acquirer, his successors and assigns. Any grantee shall be entitled to a statement from the Association, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for any unpaid assessments made by the Association against the grantor in excess of the amount set forth in the statement, provided however, the grantee shall be liable for any such assessment becoming due after the date of any such statement.

Section 9 Release of Lien: Upon payment of the delinquent assessment or its satisfaction, the Association shall record, in the same manner as the Notice of Assessment, a further certificate stating the satisfaction and release of the lien.

Section 10 Status of Assessment Lien: Upon request by any Lot Owner, the Association will furnish, for the benefit of any prospective purchaser or present or prospective encumbrancer of such Lot a statement showing all amounts then due which are secured by such lien. A reasonable fee, not to exceed Fifty Dollars, may be charged for the preparation of such statement.

Section 11 Subordination of Lien to Encumbrance: Notwithstanding any provision to the contrary in this Declaration, the lien for assessments created by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of any recorded first mortgage or first deed of trust upon such Lot made in good faith and for value. In the event any lien imposed under the provisions hereof is extinguished by reason of the foreclosure of any mortgage or deed of trust on the Lot subject to such lien, and there is a surplus in such foreclosure, there shall be a lien on such surplus in order to secure all assessments, whether regular or special, charged to such Lot after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein.

For purposes of this Section, a mortgage or deed of trust may be given in good faith or for value even though the mortgagee or the beneficiary of such mortgage or deed of trust has constructive or actual knowledge of the assessment lien provisions of this Declaration.

No amendment of this Section shall affect the rights of the holder of any mortgage or deed of trust recorded prior to recordation of such amendment unless the mortgagee or beneficiary joins in the execution of such amendment.

Section 12 Association Funds: The assessments collected by the Association shall be held by the Association for and on behalf of each Lot Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Project as specified in the annual budget and the Board shall allocate a portion of said funds as collected as reserves for contingencies, replacement and deferred maintenance of the capital improvements of the Project as specified in the annual budget. Said funds shall be deposited, as allocated, into the appropriate bank accounts and said accounts shall be separately maintained by the Association. Upon sale or transfer of any lot by any Owner, the Owner's interest in the funds shall be deemed automatically transferred to the successor or transferee of such Owner.

In the event that the Board retains a professional management service, the Board may delegate the authority to deposit or withdraw funds to responsible representatives of the professional management agent so retained. The professional management agent may additionally be authorized to establish a common trustee account for deposit of assessments as collected. Any funds deposited in such a common trustee account shall be allocated as previously specified herein.

Section 13 Books of Account: The Board shall maintain full, complete and correct books of account of the operation of the Project and vouchers supporting expenditures. Any Lot Owner, or the duly authorized representative thereof, may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Association.

## ARTICLE VI

### EASEMENTS

Section 1 Generally: There are hereby specifically reserved for the benefit of the Lots and Lot Owners, in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests apply, the easements and rights of way as particularly identified in this Article.

Section 2 Easements for Utilities and Maintenance: The rights and duties of the owners of Lots within the Project with respect to sanitary sewer, drainage, water, electricity, heating, air-conditioning, gas, telephone, cable television lines, connections and/or facilities, shall be as follows:

(a) Whenever sanitary sewer, drainage, water, electricity, heating, air-conditioning, gas, telephone, cable television lines, connections and/or facilities, are installed within or upon any Lots owned by other than the owner of a Lot served by said connections, the owners of any Lot served by said lines, connections and/or facilities shall have the right, and are hereby granted a non-exclusive easement to the full extent necessary therefore, to enter upon the Lot to repair, replace and generally maintain said lines, connections and/or facilities as and when necessary.

(b) Whenever sanitary sewer, drainage, water, electricity, heating, air-conditioning, gas, telephone, cable television lines, connections and/or facilities, are installed within the property which connections serve more than one Lot the owner of each Lot served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Lot.

(c) In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

(d) Easements over and under the property for the installation, repair, and maintenance of sanitary sewer, drainage, water, electricity, heating, air-conditioning, gas, telephone, cable television lines, connections and/or facilities, are hereby reserved by Declarant and its successors and assigns, including the Association. Following the sale of the first Lot, the Declarant and its successors and assigns shall only have those powers which result from its voting rights.

Section 3 Ingress and Egress: There is hereby reserved to each Lot, within Phases I and II and any other phase of the Project, as dominant tenement, a non-exclusive easement appurtenant to each Lot over and across the Common Area, as servient tenement, for ingress, egress, use and enjoyment of said Common Area subject to the limitations provided in this Declaration.

Section 4 Encroachment Easements: Each Lot within the Project is hereby declared to have an easement over all adjoining Lots and the common area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the wilful misconduct of said owner or owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the owners of each Lot agree that minor encroachments over adjoining lots or common area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

ARTICLE VII

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the property and each Lot therein is subject to the following:

Section 1 Lot Use: Residents shall be limited as follows: No Lot shall be occupied and used except for residential purposes by the owners and their family members, tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, his successors or assigns, may use any Lot owned by Declarant for a model home site and display and sales office until the last Lot is sold by Declarant. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

Section 2 Nuisances: No noxious, illegal, or offensive activities shall be carried on in any Lot or residence nor on any part of the property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of his respective Lot or which shall in any way increase the rate of insurance for the project, or cause any insurance policy to be canceled or to cause a refusal to renew a policy, or which will impair the structural integrity of any building.

Section 3 Vehicle and Parking Restrictions: Unenclosed storage of any commercial vehicle, or vehicle intended for recreation purposes, including land conveyances, vessels, and aircraft, but excluding attached camper bodies and motor homes not exceeding 18 feet in length, shall be prohibited within the project.

Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use.

No inoperable vehicles shall be stored out-of doors within the project for more than 24 hours.

Parking within the project shall be permitted within designated locations only. The Common Area shall be so posted. Vehicles parked contrary to this paragraph shall be removed from the project by the Owners' Association.

Section 4 Signs: No signs shall be displayed to public view on any Lots or on any portion of the property except such signs as are approved by the Board. "For Sale" or "For Rent" signs shall be allowed provided they do not exceed six (6) square feet in size.

Section 5 Animals: No animals or birds of any kind, shall be raised, bred, or kept in any Lot or on any portion of the Project except that no more than two (2) usual and ordinary household pets such as a dog, cat, bird, etc., may be kept so long as they are not kept for any commercial purpose, and provided they are kept under reasonable control at all times. No pet may be kept on the property which results in a nuisance as prohibited in Section 2 of this Article. No pets shall be allowed in the Common Area except as may be permitted by rules of the Board. No dog shall enter the common area except while on a leash which is held by a person capable of controlling it. Declarant or any owner may cause any unleashed dog found within the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City of Morgan Hill and/or Santa Clara County. No dog whose barking disturbs other owners shall be permitted to remain on the property.

Prior to any decision by the Board pursuant to this section that an Owner is responsible for the maintenance of a nuisance or any decision to remove a pet from the Project, the Owner shall be provided with written notice specifying the nature of the infraction and an opportunity for a hearing before the Board. The remedies for an alleged nuisance shall not include any measures which may be characterized as "private self-help action" and any Board action in connection with this section shall be in compliance with the provisions of Article IV, Section 2.5 of this Declaration.

Section 6 Garbage and Refuse Disposal: All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers.

Section 7 Solar Collectors, Satellite Dishes, Radio and Television Antennas: No solar collector, video or television antenna, including a satellite dish, having a diameter or diagonal measurement greater than 36 inches shall be permitted on any Lot in the front yard area, nor on the roof area of the home. Any of the above items must be screened from view from the street.

No owner shall be permitted to install, construct and/or operate a video or television antenna, including a satellite dish, having a diameter or diagonal measurement greater than 36 inches, which interferes with any other Lot Owner's phone, television and/or radio reception. In the event of a disagreement between Lot owners, the matter shall be submitted to the Board which shall make a final decision.

Section 8 Right To Lease: The Lots shall not be rented for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days, or (b) any rental if the occupants of the Lot are provided customary hotel service such as room service for food and beverage, maid service, or furnishing laundry and linen. Subject to the foregoing restrictions, the owners of the Lot shall have the absolute right to lease same provided that any lease shall be subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and the Articles and By-Laws.

Section 9 Basketball Standards and Clothes Lines: No basketball standards shall be erected or maintained and there shall be no outside laundering or drying of clothes in the front yard areas without the approval of the Board.

Section 10 Power Equipment and Car Maintenance: No major power equipment, hobby shops, or car maintenance (other than emergency work) shall be permitted within the Project which unreasonably causes disruption to any Lot Owner. In the event of a dispute between Lot Owners, the decision of the Board shall be final. In reaching a final decision, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio, television or phone reception, and similar objections.

Section 11 Liability of Owners for Damage to Common Area: The owner of each Lot shall be liable to the Association for all damages to the common area or improvements thereon caused by such owner or any occupant of his Lot or guest. Liability of an owner shall be established only after notice to the owner and a hearing before the Board.

Section 12 Drainage: There shall be no interference with the established drainage pattern over any Lot within the project, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Board of Directors. For the purposes hereof, "established drainage" is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Declarant, or that which is shown on any plans approved by the City of Morgan Hill, and which may include drainage from the Common Area over any Lot or Lots within the project. Each Owner shall have the responsibility to keep clear from rubbish and debris all catch basins which are located on the Lots unless such responsibility is assumed by the Association.

Section 13 Hazardous Materials: Storage of any material which may be considered hazardous (excepting reasonable amounts of paint and fuel for power tool use upon the lots, and other household products) including, but not limited to, flammable, corrosive and poisonous material, on any portion of the project, is prohibited.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

Section 1 Committee Approval Required: Any Owner who wishes to make any alteration or addition which will affect the exterior of his Residence or Lot is required to obtain the written approval of the Architectural Control Committee (consisting of three persons appointed by the Board or if no appointments, the Board shall be the Committee) pursuant to this Article, prior to making any such alteration or addition.

Any modifications or additions to the homes, fences, walls, or other structures within the project shall be subject to the written approval of the Architectural Control Committee.

Any Owner who makes an alteration or addition without the prior approval of the Board shall be deemed to be in violation of this Declaration; and the Board (or Architectural Control Committee), upon its own motion, shall notify the Owner in writing of the non-compliance which shall specify the particulars of such non-compliance and shall require the Owner to remedy the non-compliance.

If the Owner fails to remedy the non-compliance, the Board shall, after thirty (30) days from the date of notification of non-compliance, provide notice and hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it.

The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period, the Board may either remove the non-complying improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Charge pursuant to Article V of this Declaration.

Section 2 Appointment, Removal and Term of Office: Declarant shall appoint all replacements to the Architectural Control Committee until the second anniversary of the first close of escrow of a Lot within the first phase of the project. Vacancies on the Architectural Control Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint members.

Section 3 Duties: It shall be the duty of the Architectural Control Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms of Section 5 hereof, to adopt Architectural Control Committee Rules, to perform other duties delegated to it by the Association and to carry out all other duties imposed upon it by this Declaration.

Section 4 Meetings: The Architectural Control Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any majority of the Committee shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise. The Architectural Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred in the performance of any Architectural Control Committee function.

Section 5 Application for Approval of Improvements: Any Lot Owner, except Declarant and its designated agents, proposing to perform any work of any kind whatever which requires the prior approval of the Architectural Control Committee shall apply to such Committee for approval by notifying the Architectural Control Committee of the nature of the proposed work in writing and furnishing such information as the Committee may require.

Section 6 Approval: All approvals shall be in writing, provided, however, that any request for approval not rejected within sixty (60) days from the date of submission thereof to the Architectural Control Committee shall be deemed approved.

Section 7 Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Association or to any Lot Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any property within the Project, or (d) the execution and filing of an estoppel certificate, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him.

Section 8 Appeals: Decisions of the Architectural Control Committee may be appealed to the Board of Directors in writing. Such appeals must be made within ten (10) days of receipt of the decision.

## ARTICLE IX

### MORTGAGEE RIGHTS AND PROTECTION

Notwithstanding any other provisions of this Declaration to the contrary:

Section 1 Mortgage Permitted: Any Lot Owner may encumber his Lot with a mortgage. For purposes of this Declaration a "mortgage" means a deed of trust as well; and a "mortgagee" also means the beneficiary under a deed of trust. A "first mortgage" similarly also means "a first deed of trust".

Section 2 Subordination: Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first mortgage that encumbers all or a portion of the Project, or any Lot made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such first mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien.

Section 3 Amendment: No amendment to this Declaration, the Articles or the By-Laws shall affect the rights of any mortgagee under any mortgage made in good faith and for value and recorded before the recordation of any such amendment unless the mortgagee either joins in the execution of the amendment or approves it in writing as a part of such amendment.

Section 4 Restrictions on Certain Changes: Amendments of a material nature must be agreed to by Lot owners representing sixty-seven percent (67%) of the total voting power of the Association. In addition, approval must be obtained from fifty-one percent (51%) of the Eligible Mortgage Holders (as defined in Article I of this Declaration) of Lots that are subject to first mortgages. A change to any of the following would be considered as material:

- (a) voting rights;
- (b) assessments, assessment liens, or subordination of assessment liens;
- (c) reserves for maintenance, repair and replacement of common areas;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the general or restricted common areas, or rights to their use;
- (f) boundaries of any Lot;

- (g) convertibility of Lots into common areas or vice versa;
- (h) expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
- (i) insurance or fidelity bonds;
- (j) leasing of any residences within any Lots;
- (k) imposition of any restrictions on a Lot owner's right to sell or transfer his Lot;
- (l) a decision by the Association to establish self-management when professional management had been required previously by an eligible mortgage holder;
- (m) restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- (n) any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
- (o) any provisions that expressly benefit mortgage holders, insurers or guarantors.

When Lot owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the property, the first mortgage holders representing sixty-seven percent (67%) of the votes of the Eligible Mortgage Holders must agree.

Section 5 Right to Examine Books and Records: First mortgagees can examine the books and records of the Association at any time during normal business hours and can require the submission of financial data concerning the Association including at their request annual audited reports and operating statements as furnished to the owners to be supplied them within ninety (90) days of the end of the fiscal year.

Section 6 Distribution of Insurance and Condemnation Proceeds: No Lot owner, or other party, shall have priority over any right of first mortgagees of Lots pursuant to their mortgages in case of a distribution to Lot owners of insurance proceeds or condemnation awards for losses to or a taking of Lots or any common area. Any provision to the contrary in this Declaration or in the By-Laws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected mortgagees naming the mortgagees, as their interests may appear.

Section 7 Notices to Mortgagees of Record: On any loss to any Lot covered by a mortgage, if such loss exceeds Two Thousand Five Hundred Dollars (\$2500.00), or on any loss to the common area, if such loss exceeds Ten Thousand Dollars (\$10,000.00), or any taking of such common areas, notice in writing of such loss or taking shall be given to each

mortgagee of record. If any Owner of a Lot is in default under any provision of this Declaration, or the By-Laws, or the rules and regulations adopted by the Association, which default is not cured within thirty (30) days after written notice to such owner, the Association shall give to the mortgagee of record of such owner written notice of such default and of the fact that said thirty (30) day period has expired.

If any Lot and/or the common area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the first mortgagee on such Lot shall be given timely written notice by the Association of such proceeding or proposed acquisition.

Section 8 Effect of Breach: No breach of any provision of this Declaration shall invalidate the lien of any mortgage in good faith and for value, but all of the conditions, covenants and restrictions contained herein shall be binding on any owner whose title is derived through the foreclosure sale, trustee's sale, or otherwise.

Section 9 Appearance at Meetings: Because of its financial interest in the Project, any first mortgagee or its representative may appear (but cannot vote) at meetings of the members and the Board, and may at such meetings draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments. Upon request, a first mortgagee shall also be given written notice of all such meetings.

Section 10 Contracts Terminable: Any agreement between the Association and Declarant or between the Association and a professional manager pursuant to which the Declarant or Manager agrees to provide services shall provide for termination by either party without cause or payment of a termination fee on ninety (90) days written notice and shall have a maximum contract term of one (1) year provided that the Board can renew any such contract on a year to year basis.

Section 11 Additional Rights of Institutional Lenders: Notwithstanding any provision in this Declaration to the contrary, institutional lenders shall have the following rights:

A. First mortgagees of individual Lots may, jointly or separately, pay taxes or other charges which are in default and which may have become a charge against any association common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all first mortgagees of Lots duly executed by the Association;

B. Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those common area improvements that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments;

C. Each holder of a first mortgage lien on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder acquires title to the Lot; and

D. The Project governing instruments contain no provisions creating a "right of first refusal," but should any such rights be created in the future, any such right shall not impair the rights of any institutional lender to: (1) foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, or (2) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (3) interfere with a subsequent sale or lease of a Lot residence so acquired by the mortgagee.

## ARTICLE X

### DAMAGE, DESTRUCTION OR CONDEMNATION OF COMMON AREA IMPROVEMENTS

Section 1 Damage and Destruction: In the event of damage or destruction of the property of the Association, or any part thereof, it shall be the responsibility of the Association to repair or replace the same in substantial accordance with the original plans and specifications of the Project.

Subsection 1.1 Insured Losses: If the damage or destruction to the Association property is an insured loss the loss shall be handled as follows:

A. Minor Casualties: If the insurance proceeds initially offered or paid by the insurer do not exceed Fifty Thousand Dollars (\$50,000) such insurance proceeds shall be paid to the Association in accordance with Article IV, Section 1, Subsection 1.3 of this Declaration. The Board shall then contract to repair or rebuild the damaged portions of the Association's property in substantial accordance with the original plans and specifications of the Project, obtain bids in accordance with the following paragraphs, and the insurance funds held by the Association shall be used for such reconstruction.

B. Major Casualty: If the insurance proceeds initially offered or paid by the insurer exceed Fifty Thousand Dollars (\$50,000), the following shall apply:

(1) All insurance proceeds shall be paid to the Association and deposited in a newly-created account, and held for the benefit of the Owner(s) of the relevant Lot and their mortgagees as their respective interests may appear.

(2) The Board shall obtain firm bids from two or more responsible contractors to rebuild the relevant portion of the Project in accordance with its condition prior to damage and destruction, modified at the direction of the Board to comply with the building codes and construction standard in effect at the time of the rebuilding. To be considered, any contractor's bid shall include the premium payable for a performance, labor and material payment bond from a reputable bonding company.

(3) The Board shall then call a meeting of all affected Owners to review all submitted bids. A simple majority vote of the affected Owners will be required to accept or reject any bid. The failure by such Owners to either accept a bid or reject all bids shall authorize the Board to accept an unrejected bid it considers most favorable, or seek further bids.

Subsection 1.2 Uninsured or Insufficiently Insured Losses: If any damage or destruction is uninsured or if the insurance proceeds are insufficient to cover the cost of repairs or replacement of the property damaged, the Board will make a Special Assessment, in accordance with the provisions outlined in Article V, Section 3 of this Declaration, to cover such cost. Such special assessment is in addition to any other regular assessments and is subject to the rules herein relating to Special Assessments. Any Special Assessment for the rebuilding or major repair work of the Common Area shall be levied equally against all Lots to be assessed.

Subsection 1.3 Full Insurance Settlement: Notwithstanding any provision of this Article X, if the insurance carrier offers the full amount required to repay and restore all of the damage, then the Board shall contract to repair or rebuild the damaged portions of all affected residences in the manner provided in this Article X, Subsection 1.1 for a minor casualty.

Subsection 1.4 Emergency Repairs: Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances, and the Board may charge the operating accounts for the cost thereof. In the event of a casualty, there is a substantial

possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with applicable laws, ordinances and regulation, pending settlement of insurance claims and prior to procuring bids for performance of restoration work.

Subsection 1.5 Decision Not to Rebuild: The decision not to rebuild will require the affirmative vote or written assent of not less than seventy-five percent (75%) of each class of Owner. Upon conversion of Class B membership to Class A membership as provided in this Declaration, a vote in accordance with this Declaration, Article III, Section 4, shall be required for the decision not to rebuild. In the event the membership elects not to rebuild, the proceeds received by the Association as a result of such decision shall be distributed by the Association among the Owners of Lots and their respective mortgagees according to the respective fair market values of the Lots at the time of destruction. The fair market value shall be determined by taking the average of two appraisals as commissioned by the Board.

Section 2 Distribution of Funds in Event of Condemnation: A condemnation award affecting one or more lots which is not apportioned among the owners by a court judgment or by agreement between the condemning authority and each of the affected Owners, shall be distributed among the Owners of Lots and their respective mortgagees according to the respective fair market values of the Lots at the time of destruction. The fair market value shall be determined by taking the average of two independent appraisals as commissioned by the Association.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1 Enforcement of Bonded Obligations: When common area improvements have not been completed prior to the issuance of the first final public report for the Project and the Association is obliged under a bond or other arrangement (hereinafter called "Bond") to secure performance of the commitment of Declarant to complete the improvements, the following provisions relative to the initiation of action to enforce the obligations of Declarant and the surety under the Bond shall pertain:

(A) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the bond. If the Association has given an extension in writing for the completion of any common area improvements, the Board shall be directed to consider and vote on the question if a Notice of Completion has not been filed within thirty (30) days after the expiration of any such extension.

(B) There shall be a special meeting of the Members for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question. The meeting shall be required to be held not less than thirty-five (35) nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing not less than five percent (5%) of the total voting power of the Association.

(C) There shall be a vote by Members of the Association other than Declarant at the special meeting called. A vote of the majority of the voting power of the Association residing in members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Section 2 Invalidity of any Provision: Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

Section 3 Term: The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any Lot subject to this Declaration and his legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then owners of the Lots has been recorded within the year preceding the beginning of any successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part or to terminate the same.

Section 4 Amendments: This Declaration may be amended only by the affirmative vote or written assent of seventy-five percent (75%) of each class of the owners. After conversion of Class B membership to Class A, this Declaration may be amended only by the affirmative vote or written assent of: (1) seventy-five percent (75%) of the total voting power of the Association; and (2) seventy-five percent (75%) of the votes of members other than the Declarant. The percentage of voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for the action to be taken under that clause or provision. Any amendment must be recorded and shall become effective upon being recorded in the Recorder's Office of Santa Clara County.

Section 5 Development Rights: Declarant is undertaking the work of developing for sale Lots and certain improvements within the Project. The completion of that work and the sale, rental and other disposal of said Lots is essential to the establishment and welfare of the property as a residential community. In order that this work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from obtaining reasonable access over and across the common area of the Project or from doing within any unsold Lot owned by Declarant whatever is reasonably necessary or advisable in connection with the completion of said work;

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining within the common area such structures as may be reasonably necessary for completing said work and conducting its business of establishing said property as a residential community and disposing of the same in parcels by sale, lease, or otherwise;

(c) Prevent Declarant from maintaining such signs on Lots still owned by Declarant or on the common area as may be necessary for the sale, lease or disposition of the Lots therein; or

(d) Prevent Declarant from maintaining model home sales offices, storage facilities or related such facilities in any unsold Lots within the Project necessary or reasonable, in the opinion of Declarant, for sale or disposition of the Lots. Declarant shall be entitled to reasonable use of the common areas and common area facilities for undertaking its sale of the Lots.

Section 6 Enforcement: Notwithstanding any other provision in this document:

(a) Except as otherwise provided herein, the Association or any Owner shall have the right to enforce any and all of the covenants, conditions and restrictions now or hereafter imposed by this Declaration upon the owners or upon any property within the Project; and

(b) Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth; and

(c) Each remedy provided by this Declaration is cumulative and not exclusive; and

(d) The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provision here.

Section 7 Fair Housing: No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of his lot to any person for reasons of race, color, religion, sex, marital status, national origin, adulthood of any vendee, lessee or occupant, or ancestry.

Section 8 Civil Action Against Builder (Declarant): Before the Association commences an action for damages against the builder of the project (Declarant of this Declaration) based upon a claim for defects in the design or construction of the common interest development, all of the requirements of California Civil Code Section 1375 must be met including, but not limited to, written notice to the builder, and an attempt to settle the dispute or submit it to alternative dispute resolution.

Section 9 Notification of Civil Action:

(a) Not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other builder or developer of the project for alleged damage to the common area, alleged

damage to any separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interest that arises out of, or is integrally related to, damage to the common areas or separate interests that the Association is obligated to maintain or repair, the Board of Directors shall provide written notice to each member of the Association who appears on the records of the Association when the notice is provided. This notice shall specify all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the Association has reason to believe the applicable statute of limitations will expire before the Association files the civil action, the Association may give the notice, as described above, within thirty (30) days after the filing of the action.

#### Section 10 Alternative Dispute Resolution:

(a) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either the Heritage Greens of Morgan Hill Owners' Association or an owner or a member of the Association, solely for declaratory or injunctive relief or for declaratory or injunctive relief in conjunction with a claim for monetary damages, other than Association assessments, not in excess of five-thousand dollars (\$5,000), related to the enforcement of this Declaration, the By-laws or the Articles of Incorporation, the parties shall endeavor, as provided in this section, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties.

Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the California Code of Civil Procedure. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternative dispute resolution, and if not accepted within the 30-days period by a party, shall be deemed rejected by that party. If alternative dispute

resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(b) At the time of filing a civil action by either the Association or an owner or a member of the Association solely for declaratory or injunctive relief or for declaratory or injunctive relief in conjunction with a claim for monetary damages, other than Association assessments, not in excess of five-thousand dollars (\$5,000), related to the enforcement of this Declaration, the By-laws or the Articles of Incorporation, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with (a) above.

The failure to file such certificate shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required because the limitation period for bring the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with (a) above would result in substantial prejudice to one of the parties.

(c) Once a civil action specified in (a) above to enforce the governing documents has been filed by either the Association or an owner or member of the Association, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing Section 68603 (c) of the California Government Code.

(d) The requirements of (a) and (b) above shall not apply to the filing of a cross-complaint.

(e) In any action specified in (a) above to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(f) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under (a) above, evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under (a) above, documents prepared for the purpose or in the course of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Members of the Association shall annually be provided a summary of the provisions of this section, which specifically references this section. The summary shall include the following:

"Failure by any member of the Association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents."

The summary shall be provided at the time the pro forma budget required by Civil Code Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code.

(i) Any Request for Resolution sent to a Lot Owner shall include a copy of this Section.



# FILE COPY

DOCUMENT: 14005518

Titles: 1 / Pages: 4



Fees.....	16.00
Taxes....	
Copies..	
AMT PAID	16.00

WHEN RECORDED MAIL TO:

*M*  
 Larry Willard  
 LJW Enterprises, Inc.  
 16275 Monterey Road, Suite K  
 Morgan Hill, CA 95037

BRENDA DAVIS  
 SANTA CLARA COUNTY RECORDER  
 Recorded at the request of  
 Grantor

RDE # 001  
 1/09/1998  
 11:15 AM

RECEIVED  
 FEB 07 1998

FIRST AMENDMENT

Ans'd.....

TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

HERITAGE GREENS OF MORGAN HILL -

A PLANNED DEVELOPMENT

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions and Restrictions of Heritage Greens of Morgan Hill - A Planned Development ("First Amendment") has been approved by the written consent of the Declarant, and seventy-five percent (75%) of the Lot owners within the Heritage Greens of Morgan Hill project:

RECITALS:

This First Amendment is based upon the following facts:

A. The project is located in the City of Morgan Hill, Santa Clara County, State of California, and is described as follows:

Lots 1-20, inclusive, and Common Area Parcels A & B, as shown upon the Subdivision Map of Tract No. 8809 - "Heritage Greens" Phase One, filed in Book 676 of Maps at pages 48 & 49.

B. The Declaration of Covenants, Conditions and Restrictions governing the Heritage Greens of Morgan Hill Owners' Association (the "Declaration") was recorded on October 16, 1990 as Series # 13485235 in the Office of the Recorder of the County of Santa Clara, State of California.

C. Declarant now desires to execute and record a First Amendment to the Declaration of Covenants, Conditions and Restrictions of Heritage Greens of Morgan Hill - A Planned Development in order to clarify the maintenance responsibilities of the Owners' Association and grant necessary easements with respect to an area previously dedicated to the City of Morgan Hill which shall be maintained by the Heritage Greens of Morgan Hill Owners' Association.

THEREFORE, in accordance with the written consent of the signatory below, the following change is made to the Declaration of Covenants, Conditions and Restrictions of Heritage Greens of Morgan Hill - A Planned Development:

The following paragraph is added to Subsection 1.1 of Section 1 of Article IV of the Declaration:

The Association shall clean, maintain and repair the concrete V-ditch along the back of Lots 10-16, inclusive and between Lots 10 & 11, delineated on the Map of Tract 8809 - "Heritage Greens" Phase One as the 10 foot S.D.E. (Storm Drainage Easement).

The owners of Lots 10-16, inclusive, hereby grant an easement to the Owners' Association, for the Association and its employees and/or agents to enter Lots 10-16, inclusive, in order to clean, maintain and repair the concrete V-ditch.

IN WITNESS WHEREOF, the Declarant and at least seventy-five has percent (75%) of the Lot owners have executed this First Amendment to the Declaration of Covenants, Conditions and Restrictions of Heritage Greens of Morgan Hill - A Planned Development.

Dated: NOV. 16, 1997

LJW Enterprises, Inc., a California Corporation

By: 

ACKNOWLEDGMENT

State of California  
County of Santa Clara

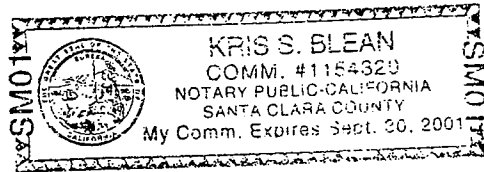
On 1/9/98 before me, the undersigned, a Notary Public in and  
for said State, personally appeared Larry J. Willard

personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.

Signature 

Name Kris S Blean  
(typed or printed)



(Seal)