

1 **BYLAWS**

2 November 5, 2019

3 **Montgomery Highlands Association, Inc.**

4 **Article 1**

5 **Name and Offices**

- 6 1.1 The name of this Corporation shall be the "Montgomery Highlands Association, Inc." (Corporation)
- 7 1.2 The principal office of the Corporation for its transaction of business is located in the unincorporated area of Los
- 8 Gatos, County of Santa Clara, California at an address noted in the Policies of the Corporation (Policies).
- 9 1.3 The Board of Directors is hereby granted full power and authority to change the principal office of the
- 10 Corporation from one location to another in the County of Santa Clara, California. Any such change shall be
- 11 noted by the Secretary in the Policies.
- 12 1.4 The Fiscal Year of the Corporation is July 1 to June 30.

13 **Article 2**

14 **Membership**

- 15 2.1 Membership shall be limited to property owners who own real property parcels on or abutting Hidden Drive,
- 16 Canon Drive (the part not maintained by the County), Littlebrook Drive, and or Overlook Drive in Santa Clara
- 17 County.
- 18 2.2 Members
- 19 a. The owner or owners of each parcel described in §2.1 are entitled to one membership for the parcel.
- 20 b. A Member represents a parcel described in §2.1 when all its owners have agreed to be bound by the Bylaws and
- 21 is entitled to one vote. Joint membership by all owners of record of a single parcel is conferred by jointly signed
- 22 acceptance of these bylaws, and entitles any owner of the parcel to vote the joint membership in the absence of
- 23 the others. Votes by more than one joint member will be given a fractional vote in proportion to the number of
- 24 owners who share the joint membership and who also vote.
- 25 c. A Non-Member represents a parcel described in §2.1 that has never had an owner of that parcel sign acceptance
- 26 of these bylaws.
- 27 d. Anyone not owning any parcel described in §2.1 is neither a Member nor a Non-Member in these bylaws.
- 28 e. An owner or owners of multiple parcels described in §2.1 is entitled to a membership and a vote for each parcel
- 29 unless otherwise agreed to between the owners and the Corporation and documented in the Policies.
- 30 2.3 The Corporation shall keep a membership list containing the name, address, and parcel number of each Member.
- 31 The list shall also contain the fact of termination and the date on which such membership ceased. Such list shall
- 32 be kept at the principal office of the Corporation and shall be subject to the rights of inspection upon reasonable
- 33 demand by any Member, said inspection to take place at the principal office of the Corporation.
- 34 2.4 A Member shall not, solely because of such membership, be personally liable for the debts, obligations, or
- 35 liabilities of the Corporation.
- 36 2.5 The membership in the Corporation shall be attached to the title of the parcel described in §2.1 and shall be
- 37 transferred only upon and with the transfer of title to said parcel.
- 38 2.6 The membership shall not be assigned, transferred, pledged, conveyed or alienated in any way except on the
- 39 transfer of title to said parcel and then only to the transferee of title to said parcel. Any attempt to make a
- 40 prohibited transfer shall be void.
- 41 2.7 The membership and all rights of membership shall automatically terminate upon the sale of any parcel described
- 42 in §2.1. Any transfer of title to a parcel shall operate automatically to transfer membership in the Corporation to
- 43 the new owner thereof. Should any parcel be divided, each of the new parcels created thereby and any new
- 44 owner thereafter shall be a Member of this Corporation.
- 45 2.8 Each member shall be liable to the Corporation for any damage to the road or roadway, or to any equipment or
- 46 improvements thereon, which may be sustained by reason of any accident, and/or the negligence and/or willful
- 47 misconduct of such member, or of his family members, relatives, guests or invitees, both minor and adult. Said
- 48 member shall be assessed by the Corporation for the cost of repair or replacement thereof, together with costs,
- 49 expenses and attorneys' fees, if any. Such assessments shall be due and payable within thirty (30) days after
- 50 written notice thereof to such member.
- 51 2.9 In the event that personal injury or property damage is sustained by any person while physically upon a parcel,
- 52 and in the further event the Corporation is sued or a claim made against it for said injury or damage, the owner(s)
- 53 of the parcel on which said injury or damage occurred shall fully defend, indemnify and hold the Corporation
- 54 harmless from any cost, expense, fee or loss as a result, direct or indirect, of such injury or damage.

Article 3

Purpose

3.1 The Corporation exists to

- a. improve and maintain and repair the private road system so that the easement holders will be able to exercise their right of access;
- b. minimize wear and tear on the road system;
- c. remove excess foliage, maintain proper grading and drainage;
- d. maintain fire protection;
- e. maintain the safety of the neighborhood;
- f. disseminate information of special interest to members and to present the membership's point of view on community issues directly affecting its members;
- g. undertake other activities which are directly related to the achievement of purposes of Article 3.

3.2 The roads of the Corporation are private roads open for public use.

Article 4

Meetings

4.1 General membership meetings shall be held at least once each fiscal year, at dates, times, and locations set by the Board of Directors and noticed to the Members at least seven days before each meeting.

4.2 Upon petition by any five Members submitted to the Chair a special general membership meeting shall be called within fifteen days after such petition is submitted to the Chair.

4.3 Quorums for general membership meetings shall be 50% of the member properties, either in person or by proxy, that are Members in good standing.

4.4 Members entitled to vote shall have the right to vote either in person or by a written proxy. Such written proxy must be executed by the Member or his or her duly authorized agent and filed with the Secretary of the Corporation. Such proxy shall expire eleven (11) months from the date of the execution of the proxy, unless otherwise provided in the proxy. The maximum term of any proxy shall be no more than three (3) years from the date of its execution. Personal voting by a Member shall take priority and precedence over any proxy and shall exclude the use of a proxy executed by said Member.

4.5 Voting Requirements

- a. Amendment of the bylaws, the formula by which Members are assessed, and dues and assessments require a two-thirds vote of the Members in good standing present and voting.
- b. For all measures not specified in 4.4(a), a simple majority of Members in good standing present will be required to pass.

4.6 Parliamentary authority for any general membership meeting shall be any recognized authority of the Chair's choice and approved by the membership.

4.7 Any item requiring a vote as specified in these bylaws must be submitted to the Secretary or Chair of the Board of Directors.

4.8 The Corporation will maintain an email group. If at least one member of a joint membership is subscribed to the group, that joint membership is considered subscribed to the group.

4.9 A general membership meeting may optionally be held through the email group.

4.10 If voting is through the email group, voting will occur as follows:

- a. The Secretary or Chair will submit the item to the group.
- b. There will be 14 days of email discussion.
- c. At the end of the discussion period the text of the discussion will be delivered to any membership that has no subscription to the Corporation email group along with a request for that membership's vote.
- d. The Secretary or Chair will call for an online vote.
- e. Voting will be open for 7 days.
- f. The Secretary or Chair will add any votes received by any membership that has not subscribed to the total online vote.
- g. The Secretary or Chair will publish the results of the vote.
- h. For the purposes of online voting "members present" is defined as all Members that submit a vote during the 7 day voting period.

Article 5

Board of Directors

- 5.1 The powers of the Corporation shall be vested in the Board of Directors, subject to such specific instruction as may be given at a general membership meeting by majority vote.
- 5.2 The Board of Directors shall consist of the Chair, a Treasurer, a Secretary, and two additional Directors. All must be duly elected by the Members at a general membership meeting and shall serve at the pleasure of the membership. The Chair, Treasurer and Secretary shall be selected by the Board of Directors.
- 5.3 Only one owner of a joint membership may serve at the same time on the Board of Directors.
- 5.4 The Directors shall serve without compensation and without bond.
- 5.4 The Board of Directors shall meet when called by the Chair or by any two Board of Directors members, but only after two day notice to all Board of Directors members.
- 5.5 Three members of the Board of Directors shall constitute a quorum.
- 5.6 In the instance of disqualification or resignation of any member of the Board of Directors, the Board of Directors shall appoint a replacement to serve until the next general membership meeting.
- 5.7 INDEMNIFICATION
- a. To the fullest extent permitted by law, this corporation shall indemnify its directors, officers, employees, and other persons described in Corporations Code Section 5238(a), including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding", as that term is used in that section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. "Expenses", as used in this bylaw, shall have the same meaning as in that section of the Corporations Code.
- b. On written request to the Board by any person seeking indemnification under Corporations Code Section 5238(b) or Section 5238(c), the Board shall promptly decide under Corporations Code Section 5238(e) whether the applicable standard of conduct set forth in Corporations Code Section 5238(b) or Section 5238(c) has been met and, if so, the Board shall authorize indemnification.
- c. To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under Article 10, Section 1 of these bylaws in defending any proceeding covered by this Section shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the corporation for those expenses.
- 5.8 INSURANCE
- This corporation shall have the right, and shall use its best efforts, to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, to cover any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising from the officer's, director's, employee's or agent's status as such.

Article 6

Officers

- 6.1 The officers of the Corporation shall be its Chair, its Treasurer, and its Secretary.
- 6.2 The Chair shall chair all Board of Directors and general membership meetings when present, and is an ex-officio member of all committees.
- 6.3 The Chair will appoint committees and their chairs, call all Board of Directors and general membership meetings except as otherwise provided, and perform such other duties as are normally incident to the office.
- 6.4 Legal documents will require the signature of the Chair and one other member of the Board of Directors.
- 6.5 The Treasurer shall be recipient, custodian, and disbursing agent of the Corporation for disbursements authorized by the Board of Directors.
- 6.6 The Treasurer will present financial reports as requested by the Chair or a majority of members present at any Corporation meeting.
- 6.8 The Treasurer will provide an annual report of the Corporation and file any required tax forms after the close of each calendar year.
- 6.9 In the absence or temporary incapacity of the Chair the Treasurer will act for the Chair.
- 6.10 The Secretary shall serve as secretary for the Corporation and the Board of Directors.
- 6.11 The Secretary will keep a register of all Members, minutes of all general membership, list of Policies agreed to by Members and Board of Directors meetings, and send out notices of meetings.

6.12 In the absence or temporary incapacity of the Treasurer the Secretary will act for the Treasurer.

Article 7

Dues & Assessments

7.1 Members shall pay dues, assessments, and other levies in an amount and manner as determined by the Board of Directors and approved by the membership.

7.2 Members in Good Standing.

a. Members that are less than thirty-one (31) days delinquent in the payment of dues, assessments or any fees are Members in Good Standing.

b. Members who are in arrears are not Members in Good Standing.

a. There shall be a lien in favor of the Corporation against that parcel for any unpaid dues or assessment. The Board of Directors may cause a notice of such lien to be recorded in the appropriate county recorder offices. All legal costs and attorney fees incurred to collect the delinquent assessment shall be paid by the Member.

b. The following Member Rights are suspended until their account is fully paid up:

i. Voting privileges;

ii. Right to appoint agent by written proxy; any existing proxy shall be terminated;

iii. Right to participate in meetings of the members;

iv. Right to inspect the Corporation's books and records;

v. Right to receive notices or minutes;

vi. Eligibility to be a member of the Board of Directors;

vii. Eligibility to be an officer of the Corporation.

7.5 No Member is exempt from liability for any dues or assessments by waiver of the use or enjoyment of the roads or by abandonment of the Member's parcel.

7.6 Non-Members owning parcels described in §2.1 are obligated to pay their fair share as stated in California Civil Code 845.

7.7 In case of nonpayment by a Non-Member the Corporation is authorized to act collectively on behalf of all Members in Good Standing to seek whatever remedies, whether legal or equitable, the Corporation may have to enforce the obligations of the Non-Member.

7.8 Assessment charges and other fees collected shall be promptly deposited in a commercial account (which account shall be clearly designated in the name of the Corporation or be an attorney trust account) in a bank to be selected by the Treasurer who shall be responsible to the Members for the maintenance of accurate records thereof at all times.

7.9 No withdrawal shall be made from the account, except for payments, charges and expenses agreed upon by the Corporation.

7.10 Discretionary spending by the Board of Directors for emergencies may be authorized by the membership up to a specified limit for defined purposes.

Article 8

Policies and Amendments

8.1 The address of the Corporation, the formula by which members are assessed, current amounts for dues and assessment, and any other measures receiving an affirmative vote of the Members will be kept in the Policies of the Corporation document. The date the policy was voted on will be included.

8.2 Amendments to the bylaws shall be presented in writing to the Chair and may be acted upon at any general meeting of the Corporation, save that copies of the proposed amendment must be mailed or delivered by the proponent or the proponent's agent to each Member at least ten days prior to the general membership meeting at which it is to be acted upon. An affirmative vote of 2/3 of the members present and voting shall be necessary to adopt any amendment.

Article 9

Notices

9.1 The words notice, delivery, mail or writing in these bylaws are interpreted to include electronic mail, mail delivery service and personal delivery.