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AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS
FOR
MONTAGE AT MISSION HILLS

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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B. Declarant developed on the Property a planned development consisting of one hundred twenty eight (128) residential Lots improved with Residences and the Association Property, consisting of private streets, controlled access gate and related facilities, entry monument signs, landscaped areas, perimeter walls and such other Improvements owned by Montage at Mission Hills, Inc. ("Association"), or which the Association is otherwise obligated to maintain.

C. Declarant conveyed the Property subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life in the Property, all of which run with the Property and are binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and inure to the benefit of each Owner thereof.

D. It was the further intention of the Declarant to convey residential Lots to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights of way, liens, charges and equitable servitudes between Declarant and such Owners ("Protective Covenants") which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Property as a "planned development" as that term is defined in Section 4175 of the California Civil Code.

E. The Declarant developed the Property as a walled and gated community with the paramount objective of protecting the privacy of the Owners and to limit access to the Property.

F. On January 11, 2018, the Honorable James T. Latting, Judge of the Superior Court for Riverside County, Palm Springs Branch, ordered that the Verified Petition for Relief from Voting Requirements to Amend the Declaration of Covenants, Conditions and Restrictions, filed by the Association pursuant to *Civil Code* 4275, be granted, based upon the affirmative vote of the members, voting by secret ballot, to amend and restate the Restated Declaration, actually cast in favor of this Declaration. The Court further ordered that this Declaration be recorded together with the Court's Order Granting Petition to Reduce Percentage of Affirmative Votes Necessary to Amend the Declaration of Covenants, Conditions and Restrictions. As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

1.1. "Articles" means the Articles of Incorporation of Montage at Mission Hills, Inc., which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

1.2. "Assessment" means any Regular, Special or Reimbursement Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of ARTICLE IV of this Declaration.

1.3. "Association" means Montage at Mission Hills, Inc., a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in California Civil Code Section 4080.

1.4. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Section 3.6 of this Declaration, as the same may be in effect from time to time.

1.5. "Board of Directors" or "Board" means the Board of Directors of the Association.

1.6. "Bylaws" means the Amended and Restated Bylaws of the Association.

1.7. "City" means City of Cathedral City and its various departments, divisions, employees and representatives.

1.8. "Common Area" means Lettered Lots C through R, inclusive, of Tract No. 29771, in Cathedral City, as per Map filed in Book 311, Pages 46 through 53, inclusive, of Maps, in the Office of the County Recorder of Riverside County, California.

1.9. "Common Expense" means any use of Common Funds authorized by ARTICLE IV of this Declaration and Article IX of the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Area that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

1.10. "Declarant" means the original Developer of the Property, namely, Ford-Davall Group, LLC, a California Limited Liability Company, and any successor or successors in interest.

1.11. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the documents referenced in the Preamble to this Declaration together with all amendments, supplements and annexations to those documents, adopted prior to adoption of this Declaration.

1.12. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

1.13. "Improvement" includes, without limitation, the construction, installation, alteration, painting, or remodeling of any buildings, structures, walls, decks, fences, patios, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, solar panels, spas, antennas, poles, utility lines, parking areas, street lights, pavement, sidewalks, driveways, decorative or informative signs, retaining walls, screens, private utility line connections, irrigation systems, awnings, shades, screen doors, exterior doors, exterior air conditioning and/or water softening fixtures or systems, hedges, windbreaks, or any structures and appurtenances thereto of every kind;

provided, however, that improvements to the interior of any Residence shall not be considered an Improvement, as defined herein, unless the interior improvement involves any structural alteration of, or intrusion into, a party wall, roof or other load bearing wall within the Residence or is detectible from outside the Lot.

1.14. "Lot" means any of one hundred twenty eight (128) residential Lots within the Property. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot.

1.15. "Map" means the subdivision maps for Tract No. 29771, in Cathedral City, as shown on a map recorded in Book 311, Pages 46 through 53, inclusive, of Maps, in the Office of the County Recorder of Riverside County, California.

1.16. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 13.6 of this Declaration.

1.17. "Mortgage" means any security device encumbering all or any portion of the Property, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a Mortgagee in the conventional sense.

1.18. "Owner" means any person, firm, corporation or other entity which is the record owner of a Lot.

1.19. "Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property.

1.20. "Property" means all parcels of real property described in Recital A of this Declaration and includes all buildings, structures, utilities and other improvements located on the parcels, all appurtenances to the parcels and the Common Area.

1.21. "Regular Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Section 4.2 of this Declaration.

1.22. "Residence" means a private, single family dwelling constructed on a Lot.

1.23. "Residential Use" means occupation and use of a Residence for residential dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

1.24. "Reimbursement Assessment" means an Assessment made against an Owner and his or her Lot in accordance with Section 4.4 of this Declaration.

1.25. "Special Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Section 4.3 of this Declaration.

ARTICLE II
PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

2.1. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area within the Property, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with title to every Lot, subject to the following rights and restrictions:

(a) The right of the Association to adopt Association Rules as provided in Section 3.6 of this Declaration, regulating the use and enjoyment of the Property for the benefit and well being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to temporarily suspend the voting rights of any Owner, subject to compliance with the due process requirements of Section 13.6 of this Declaration.

(b) The right of the Association to dedicate or transfer any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as the Association shall deem necessary.

(c) The right of the Association to enter upon and access adjoining Lots, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Lot is being entered upon. In case of emergency the right of entry shall be immediate.

(d) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Property imposed by the City or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the Right of the City or such governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Association Property designed for vehicular movement to perform municipal functions of emergency or essential public services.

2.2. Persons Subject to Governing Documents. All present and future Owners, tenants and occupants of Lots within the Property shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract for sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owner, tenant or occupant that all of the provisions of this Declaration, as they may be amended from time to time, shall be binding on such Owner, tenant or occupant and that such Owner, tenant or occupant will comply with the Governing Documents.

2.3. Delegation of Use. The Owners acknowledge and agree that Montage at Mission Hills is a private, gated community and that the Owners have a vested interest in assuring, to the extent possible, that access to the community is limited to Owners and to those persons authorized and identified by an Owner as having the right to enter the Development in the Owner's absence. Consequently, Owners' rights to lease their Lots, and to provide regular access to other persons, including invitees, guests and family members, are subject to the requirements of this Section 2.3.

The provisions of this Section 2.3 are included to protect and promote the Owners' interest in privacy and limited access to the Property, as described in Recital E of this Declaration.

(a) Leasing of Residences. Any Owner may delegate the Owner's rights to use and enjoy the Common Area, in the absence of the Owner, to members of the Owner's family or guests or to the Owner's tenants, lessees or contract purchasers who reside in the Owner's Residence, provided that any rental or lease may only be for Residential Use and for a term not less than 30 days. No Owner may lease his Residence for transient or hotel purposes, defined as any lease for a term less than 30 days. Further subletting by an Owner's lessee shall be prohibited.

(i) Any rental or lease of a Lot shall apply to not less than the entire Lot, including its appurtenant rights (except voting rights in the Association that may not be transferred to a tenant or lessee). Any rental or lease of a Lot shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner shall be responsible for compliance by the Owner's tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Lot. The lease or rental agreement shall provide that any failure of the tenant to comply with the terms of any Governing Document shall constitute a default and material breach of the lease or rental agreement and shall entitle the Owner to terminate the tenancy. The Owner/lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association or any Owner to enforce the Governing Documents in accordance with Article XIII if the Owner's tenant violates the Governing Documents.

(ii) Not less than five (5) days before the commencement of a rental or lease of a Lot, the Owner shall report the tenancy to the Association and provide the Association with a copy of the lease or rental agreement and with such other identifying information as may be required under the Rules and Regulations adopted from time to time.

(iii) Prior to commencement of a rental or lease of a Lot, the Owner shall provide the tenant with a copy of the current Rules and Regulations of the Association and the Association with a signed statement that this has been completed.

(b) Access by Owners' Invitees, Guests and Family Members. Owners shall provide the following information to the Association concerning individuals (other than renters) to whom the Owners provide access codes or access devices that allow for regular or unlimited access to the Property in the Owner's absence:

(i) The names and addresses of the individuals;

(ii) The specific access code or access device number provided to the individuals.

(iii) Such other information as may be required by the Rules.

2.4. Obligations of Owners. Owners of Lots within the Property shall be subject to the following:

(a) Contract Purchasers. A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(b) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (b) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(c) Prohibition on Avoidance of Obligations. No Owner, by nonuse of the Common Area, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

(d) Termination of Obligations. Upon the conveyance, sale or other transfer of a Lot to a new Owner, the transferor Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed or other instrument evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the interest in said Lot shall cease.

ARTICLE III HOMEOWNERS ASSOCIATION

3.1. Association Membership. Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Ownership of a Lot or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership in all Lots in the Property ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu of foreclosure. Every Lot Owner shall have certain preferential membership privileges ("Social/Fitness Membership") at Mission Hills Country Club, Inc., a California corporation ("MHCC"), pursuant to the terms of the Social/Fitness Membership Agreement entered into with MHCC, attached to this Declaration as Exhibit "A."

3.2. One Class of Membership. The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

3.3. Voting Rights of Members. Each Member of the Association shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot.

Voting rights may be temporarily suspended under those circumstances described in Section 13.6 of this Declaration.

3.4. **Transfer of Memberships.** Membership in the Association shall not be transferred, encumbered, 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, membership passes automatically to the purchaser upon recording of a deed or other instrument evidencing transfer of title to the Lot. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu of foreclosure. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Lot, the Association shall have the right to record the transfer on its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

3.5. **Powers and Authority of the Association.**

(a) **Powers Generally.** The Association shall have the responsibility of managing and maintaining the Common Area and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its Property and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws.

(b) **Association's Limited Right of Entry.** The Association, and/or its agents shall have the right, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including (i) obligations to enforce the architectural and land use restrictions contained in this Declaration; (ii) any obligations with respect to construction, maintenance and repair of adjacent Common Area; or (iii) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this subparagraph 3.5(b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her tenant is present. In all nonemergency situations, the Association or its agents shall furnish the Owner or his or her tenant with at least 24 hours' written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Residence located on the Lot.

3.6. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration and in accordance with Civil Code Sections 4340 through 4360, propose, enact and amend rules and regulations of general application to the Owners of Lots within the Property. Such rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management and use of the Common Area by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area; (ii) architectural control and the rules of the Architectural Committee under Section 5.5 of this Declaration; (iii) the conduct of disciplinary proceedings in accordance with Section 13.6 of this Declaration; (iv) regulation of parking, pet ownership, clotheslines and drying racks in the backyards of the Lots and other matters subject to regulation and restriction under ARTICLE VI of this Declaration; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other Improvements on any Lot; and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

3.7. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in ARTICLE III of this Declaration.

3.8. Limitation on Liability of Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Area and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No Released Party shall be responsible to any Owner or to any member of his or her family or any of his or her tenants, guests, servants, employees, licensees, invitees or any other person for any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person on any Lot or within any Residence or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Property, or by any other cause,

unless the same is attributable to his or her own willful or wanton act or gross negligence. It is the intent of this subparagraph to provide volunteer directors and officers with protection from liability to the full extent permitted by California Civil Code Section 5800, or comparable superseding statute, and to the extent this provision is inconsistent with said Section, the Civil Code shall prevail.

ARTICLE IV ASSESSMENTS

4.1. Assessments Generally.

(a) **Covenant to Pay Assessments.** Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or other conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Reimbursement Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

(c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Section 4.8(b) of this Declaration.

(d) **No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non use of his or her Lot or any other portion of the Property.

4.2. Regular Assessments.

(a) **Preparation of Annual Budget.** Not less than 30 nor more than 90 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Area) by preparing and distributing to all Association Members a budget satisfying the requirements of Civil Code Section 5300 and Section 12.5 of the Bylaws.

(b) Establishment of Regular Assessment. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (a) above, and subparagraph (c) below, the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association.

(c) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Common Area or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Area or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (a) above, provided that, prior to the imposition or collection of an assessment under this paragraph (ii) 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 reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(d) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Property owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(e) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.3(a)(i) for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

(f) Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Lot shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid by the 15th day of the month in which the Assessment is due.

4.3. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Section 4.2(a), the Board of Directors may levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this Section 4.3(a)(i) shall be subject to membership approval requirements under the circumstances described in Section 4.3(b).

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Area). The Special Assessment power conveyed hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, repair and replacement of the Common Area through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area in accordance with ARTICLE X of this Declaration.

(b) Special Assessments Requiring Membership Approval. No Special Assessments described in Section 4.3 of this Declaration, which in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in Section 4.2(c).

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.2(d), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

4.4. Reimbursement Assessments.

(a) Circumstances Giving Rise to Reimbursement Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.3, above, the Board of Directors may impose Reimbursement Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, provided that no Reimbursement Assessments may be imposed against an Owner pursuant to this Section 4.4 until the Owner has been afforded the

notice and hearing rights to which the Owner is entitled pursuant to Section 13.6 of this Declaration, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Reimbursement Assessments include the following:

(i) **Damage to Common Area.** In the event that any damage to, or destruction of, any portion of the Common Area, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

(ii) **Expenses Incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Property that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents or to remedy or mitigate the effects of any noncompliance, the amount incurred by the Association (including title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

(iii) **Required Maintenance on Lots.** As more particularly provided in Section 3.5(b) (and without limiting the generality of that subparagraph), if any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, weeds or vegetation, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Reimbursement Assessment against the offending Owner.

(b) **Levy of Reimbursement Assessment and Payment.** Once a Reimbursement Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in Section 4.4(a), notice thereof shall be mailed to the affected Owner and the Reimbursement Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

4.5. **Purpose and Reasonableness of Assessments.** Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Property; (b) to promote the enjoyment and use of the Property by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

4.6. Exemption of Certain of the Property From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien for any Assessment:

- (a) Any portion of the Property dedicated and accepted by a local public authority;
- (b) The Common Area; and
- (c) Any Lot owned by the Association.

4.7. Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors which has offices located within the State of California, County of Riverside. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code Section 5510(a) and Section 12.2 of the Bylaws.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained.

(b) Separate Accounts: Commingling of Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

4.8. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Reimbursement Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent. If an Assessment is delinquent, the Association may recover all of the following: (i)

reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorneys' fees; (ii) a late charge in the sum of ten dollars (\$10.00) or ten percent of the delinquent Assessment; (iii) interest on all sums imposed in accordance with this paragraph, including the delinquent Assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve percent (12%) interest, commencing thirty (30) days after the Assessment becomes due.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in California Civil Code Section 5650 or comparable superseding statute, the amount of any delinquent Regular or Special, or Reimbursement Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this ARTICLE IV and California Civil Code Section 5650(b), (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied, (C) the name of the Owner of Record of such Lot, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(ii) Remedies Available to the Association to Collect Assessments. The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code Section 2934a. Any sale of a Lot by a trustee acting pursuant to this Section 4.8 shall be conducted in accordance with California Civil Code Sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust.

(iii) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent with respect to the Owner's Lot and the costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall state the election of the Association to sell the Lot or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California Civil Code Section 2924c, or comparable superseding statute.

The Association shall have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation.

Furthermore, in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(iv) **Actions for Money Judgment.** In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, late charges, interest, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

(v) **Judicial Foreclosure.** The Association may bring an action for judicial foreclosure to seek an order for foreclosure of its assessment lien, which shall secure all accrued and unpaid Assessments, late charges, interest, costs and attorneys' fees. The assessment lien shall remain enforceable and intact even after entry of any judgment for foreclosure, until such time as the property is sold by the sheriff or marshal pursuant to a writ of sale, or such time as the lien is extinguished by virtue of a foreclosure of a senior lien, and shall not be merged into any judgment obtained. Nothing in this section shall preclude the Association from seeking a money judgment in addition to an order for foreclosure of the Association's assessment lien.

4.9. **Transfer of Lot by Sale or Foreclosure.** Except as otherwise provided herein, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to such Lot prior to the sale or transfer. However, the sale or transfer of any Lot pursuant to the foreclosure of any first Mortgage or other mortgage or lien recorded prior to the Association's Assessment lien (collectively "prior encumbrance") shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale or otherwise shall relieve the new Owner of such Lot, whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the first Mortgagee or other purchaser of a Lot obtains title to the same as a result of foreclosure of any such first Mortgage or other prior encumbrance or exercise of a power of sale contained therein, the person acquiring title, his or her successors and assigns, shall not be solely liable for the Assessments chargeable to such Lot which became due prior to the acquisition of title. Instead, such unpaid Assessments shall be deemed to be Common Expenses collectible from the Owners of all of the Lots, including such acquirer, his or her successors and assigns. Furthermore, foreclosure shall not affect the Association's right to maintain an action for the collection of delinquent Assessments against the foreclosed party personally.

4.10. **Priorities.** When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances recorded subsequent thereto, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of

sale or a judicial foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

4.11. **Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.2 and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

4.12. **Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section 4.12 shall be subordinate to the rights of any first Mortgagee.

4.13. **Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this ARTICLE IV, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

ARTICLE V ARCHITECTURAL CONTROL

5.1. Architectural Committee Approval of Improvements.

(a) **Approval Generally.** Before commencing construction, installation or modification of any Improvement (as defined in Section 1.13) within the Property, the Owner planning such improvement must submit to the Association's Architectural Review Committee ("Committee") a written request for approval. The Owner's request shall include structural plans, specifications and plot plans satisfying the requirements of Section 5.5. Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Committee shall base its decision to approve or disapprove the proposed improvement on the criteria described in Section 5.6.

(b) **Modifications to Approved Plans Must Also Be Approved.** Once a work of Improvement has been duly approved by the Committee, no material modifications shall be made in the approved plans and specifications and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Committee, in its sole

discretion, may order the Owner, his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of the Association, its Architectural Review Committee, or the agents or employees of either that a work of Improvement, or any modification of the work, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 5.13, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Committee review and approval is obtained.

5.2. **Committee Membership.** The Architectural and Landscape Committee shall be composed of Members of the Association appointed by the Board. Committee members shall serve subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for the services performed. In the event the Board does not appoint an Architectural Review Committee, the Board shall serve as the Committee.

5.3. **Duties of Committee.** It shall be the duty of the Architectural Review Committee to consider and act upon the proposals and plans submitted to it pursuant to this Declaration, to perform other duties delegated to it by the Board of Directors and to carry out all other duties imposed upon it by this Declaration.

5.4. **Meetings.** The Architectural Committee shall meet from time to time as necessary to properly perform its duties. The vote or written consent of a majority of the Committee members shall constitute the action of the Committee and the Committee shall keep and maintain minutes of its meetings, reflecting actions taken on each matter submitted to it.

(a) **Attendance at Meetings.** The Owner applicant shall be entitled to appear at any meeting of the Architectural Review Committee at which the Owner's proposal has been scheduled for review and consideration. The Owner shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Other Owners whose Property may be affected by the proposed Improvement shall also be entitled to attend the meeting.

(b) **Notice of Meetings.** Reasonable notice of the time, place and proposed agenda for Architectural Review Committee meetings shall be communicated before the date of the meeting to any Owner applicant whose application is scheduled to be heard.

5.5. **Architectural Standards.** The Board may, from time to time, adopt, amend and repeal rules and regulations to be known as "Architectural Standards" ("Standards"). Such Standards shall interpret and implement the provisions of this ARTICLE V by setting forth (a) the standards and procedures for Architectural Review Committee review; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use within the Property; (c) restrictions controlling the species and placement of any trees, plants, shrubbery, ground cover, etc., to be placed, planted, irrigated and maintained in the Property; and (d) procedures and required information and materials to be included with all plans and specifications. The Standards may provide for the payment of a fee payable to the Association to accompany each application for approval and the Association may

determine the amount of such fee, in its discretion. The Standards may also require a deposit for the Association's use in the event of any damage to the Common Area that is caused by the Applicant/Owner's construction activities. The Association may retain such deposit to pay any delinquent Assessments, including Reimbursement Assessments, owed by the Owner. Notwithstanding the foregoing, no Standard shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Standards and this Declaration, the provisions of the Declaration shall prevail.

5.6. Basis for Approval of Improvements. When a proposed work of Improvement is submitted to the Architectural Review Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner's plans and specifications (i) conform to this Declaration and to the Architectural Standards in effect at the time those plans are submitted to the Committee; (ii) will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Property; and (iii) will not interfere with the reasonable enjoyment of any other Owner of his or her Lot;

(b) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standard prevailing within the Property and with the overall plan and scheme of development of the Property and the purpose of this Declaration.

(c) Though it is recognized that the Committee's determination to approve or disapprove an Improvement will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith. Factors commonly considered by the Committee in reviewing proposed Improvements include the quality of workmanship and materials proposed for the Improvement project; the harmony of the proposed Improvement's exterior design, finish materials, and color with that of the existing structures; and the proposed location of the Improvement in relation to existing topography, finished grade elevations, roads, Common Area and other structures.

(d) The Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable in the context of a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location or locations within the Property. Factors that may cause the Committee to reject a proposal that was previously approved at another site include: poor drainage; unique topography; visibility from roads, Common Area or other Lots; proximity to other residences or Common Area; or prior adverse experience with the product or design of the proposed Improvement or any component thereof.

5.7. Time Limits for Approval or Rejection. Within 45 days after the Committee's receipt of plans and specifications satisfying the requirements of this ARTICLE V, the Committee shall transmit to the applicant/Owner written notice of either approval or disapproval. If the Architectural Review Committee disapproves the Owner's plans and specifications, the Committee shall do so in a written decision that shall include an explanation of the reasons for the disapproval, and the procedure for reconsideration of the decision to the Association's Board of Directors. On request from an Owner who submits plans and specifications to the Committee, the Association shall

provide the Owner with written evidence of the Association's receipt of such plans and specifications. An Owner's inability to produce written evidence from the Association that it received plans and specifications shall be prima facie evidence that the Association did not receive such plans and specifications.

5.8. Reconsideration of Disapproval by Board of Directors. An Owner whose plans and specifications have been disapproved by the Architectural Review Committee may submit a written request for reconsideration of the Committee's decision to the Board. Such request for reconsideration must be submitted to the Board within 30 days of the date of the Committee's written disapproval. The Board shall act on the request for reconsideration within 45 days of receipt of the Owner's request. If the Board does not act on the request for reconsideration within such 45 day period, the Board will be deemed to have decided in favor of the applicant. Provided, however, the applicant shall not have a right to reconsideration if the initial determination to disapprove the application was made by the Board of Directors or by a Committee with the same composition as the Board of Directors, at a meeting open to the Members.

5.9. Proceeding With Work. Upon receipt of approval of an Improvement from the Architectural Review Committee, the Owner shall, as soon as practicable, satisfy all conditions of approval and diligently proceed with the commencement of the work. In all cases, work on an Improvement project shall commence within one year from the date of such approval. If the Owner fails to comply with this paragraph, any approval given pursuant to this ARTICLE V shall be deemed revoked unless the Committee, upon written request of the Owner prior to the expiration of the initial one year period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

5.10. Failure to Complete Work. Unless the Owner has been granted an extension of time to complete the project by the Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within one year after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents.

If the Owner fails to comply with this Section 5.10, the Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 5.13 below as though the failure to complete the Improvement was a noncompliance with approved plans.

5.11. Inspection of Work by Architectural Committee. Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the Architectural Committee shall have the right to inspect the jobsite to confirm that the Improvement project is proceeding in accordance with the approved plans and specifications.

(b) Upon the completion of any work of Improvements for which Architectural Committee approval is required under this ARTICLE V, the Owner shall give the Architectural Committee a written notice of completion.

(c) Within 30 days thereafter, the Committee, or its duly authorized representative, may inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Architectural Committee finds that the Improvement was not erected, constructed, reconstructed or installed in substantial compliance with the Owner's approved plans, then within the 30 day inspection period the Committee shall give the Owner a written notice of noncompliance detailing those aspects of the Improvement project that must be modified, completed or corrected, and providing time frame for completion of the work. If the violation or nonconforming work is not corrected, the Association shall have the enforcement rights and remedies set forth in Section 5.13, below.

(d) If for any reason the Committee fails to notify the Owner of any noncompliance within 30 days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Committee with respect thereto.

5.12. Landscaping. Landscaping shall be deemed to be a work of Improvement requiring Committee approval. Landscaping shall include lawns, shrubs, trees, flowers and any landscape structures.

5.13. Enforcement. In addition to other enforcement remedies set forth in this Declaration, the Board of Directors shall have enforcement rights with respect to any matters required to be submitted to and approved by the Architectural Review Committee, and may enforce such architectural control by any proceeding at law or in equity. The Committee shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to the Committee. No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

5.14. Limitation on Liability. Neither the Association, its Architectural Review Committee, or Board, nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work of Improvement, whether or not pursuant to approved plans, drawings or specifications; or (c) the development of any Lot within the Property.

5.15. Compliance With Governmental Regulations. Review and approval by the Architectural Review Committee of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any

building permit process or any other governmental requirements or agreements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement. The Association is not responsible for and does not review applications for or make any decision regarding the application's compliance with building codes or other laws. Committee approval does not relieve the owner of any duties to obtain City permit(s), nor does Committee approval reflect compliance with any other public agency requirements. If an applicant contends that any provision of law mandates or requires the installation of all or any part of any proposed Improvement, the applicant must specify, in writing, to the Architectural Review Committee what provision of law applies and what components of the proposed Improvement are required by law.

ARTICLE VI USE OF PROPERTY AND RESTRICTIONS

6.1. Use of Lots.

(a) All Lots within the Property shall be used solely for Residential Use as defined in Section 1.23. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation.

(b) All Lots and the Residences and other Improvements erected or placed on Lots (including, without limitation, landscaping) shall at all times be maintained in good condition and repair and in a manner that is neat, orderly and aesthetically pleasing. Trees, hedges, shrubs and other plant materials shall be regularly pruned and trimmed to a neat and attractive appearance.

(c) No commercial signs shall be displayed on any Lot or posted within or upon any of the Property except that an Owner may post on his or her Lot a single "For Rent" or "For Sale" sign of reasonable dimensions and appearance as stated in the Association Rules.

(d) No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.

(e) Garage doors may not be left open, except as temporarily necessary or while used for entering or exiting.

(f) Driveways must be kept clean and free from oil stains.

6.2. Common Area. Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, that Owner's family members, contract purchasers, tenants, guests or invitees.

6.3. Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Property which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

6.4. Temporary Structures. No structure of a temporary character, trailer, tent, shack or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently.

6.5. Animals. No animals, livestock, reptiles, insects, poultry or other animals of any kind shall be kept in any Residence except that domesticated birds, cats, dogs, or aquatic animals kept within an aquarium may be maintained on a Lot as household pets, provided that they are not kept, bred or raised thereon for commercial purposes or in unreasonable quantities. Animals belonging to Owners, occupants, or their licensees, tenants or invitees within the Property must be either kept within an enclosure or on a leash being held by a person capable of controlling the animal. It shall be the absolute duty and responsibility of each such Owner to clean up after his or her pets. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by the Owner or the Owner's family members, tenants, invitees or guests. Notwithstanding the foregoing, the Board may prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance.

6.6. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Residence or on any portion of any Lot, provided that the foregoing restriction shall not apply to the activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this Section 6.6 shall be construed in such a manner so as to prohibit any Owner from (a) maintaining his or her personal library in his or her Residence, (b) keeping his or her personal business records or accounts in his or her Residence; (c) handling his or her personal or professional telephone calls or correspondence from the Residence, (d) leasing or renting his or her Residence in accordance with Section 2.3, or (e) conducting any other activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use of the Lot and not in violation of this Section 6.6.

6.7. Garbage. No rubbish, trash or garbage shall be allowed to accumulate on any Lot. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities which shall be located on the Owner's Lot and screened from view from any street, neighboring Lot or Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Property to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section.

6.8. Storage. Storage of personal property on any Lot shall be entirely within enclosed storage areas. There shall be no woodpiles or storage piles accumulated on top or outside of any enclosed storage area.

6.9. Clotheslines. Subject to reasonable rules adopted pursuant to Section 3.6, clotheslines and drying racks may be maintained in the backyards of the Lots. There shall be no

laundrying of clothes on any Lot in a manner which is visible from any neighboring Lot or the Common Area.

6.10. Burning. There shall be no exterior fires whatsoever except barbecue fires or in fire pits located upon the Owner's Lot and contained within receptacles designed for such purposes. No Owner or resident shall permit any condition to exist on his or her Lot, including, without limitation, trash piles or weeds, which creates a fire hazard or is in violation of local fire regulations.

6.11. Diseases and Pests. No Owner shall permit any thing or condition to exist on his or her Lot, which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

6.12. Parking Restrictions. All streets within the Property are private and are subject to all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over the Property. Except in such areas as designated by the Board, no Owner of a Lot in the Property shall park, store or keep any vehicle except wholly within his garage or driveway. No Owner shall park, store or keep any large commercial type vehicle, any recreational vehicle (including, but not limited to, any camper, motor home, trailer, boat trailer, mobile home or other reasonably similar vehicle, boat or aircraft) or any vehicle other than a private passenger vehicle on his Lot or on any portion of the Association Property except temporarily as may be allowed by the Rules or special permission from the Board.

No Owner shall conduct major repairs or major restorations of any motor vehicle of any kind whatsoever upon the Association Property, except that an Owner may work on motor vehicles in his or her garage with the garage door closed, and except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility.

No inoperable vehicle shall be stored anywhere on the Property in such a manner as to be visible to neighboring property outside of the Property or any of the Lots. In any event, all vehicles shall be parked in compliance with applicable City ordinances.

6.13. Regulation of Parking. Subject to the rights of the Association, through its officers, committees and agents, the Board is hereby empowered to establish parking and no parking areas within the Association Property, in accordance with Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles. The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above limitations whether the same shall belong to any Owner or a member of his family or to any tenant, lessee, guest or invitee of any Owner. Charges for such towing and storing shall be assessed against the Owner of the Lot which is responsible for the violation of such restrictions, and such assessment may be enforced as a Compliance Assessment.

6.14. Drones. Subject Board shall be authorized to adopt rules and regulations governing the use of drones in the Property, including rules prohibiting the use of drones in the Property, subject to any superseding federal, state or local laws or ordinance.

6.15. Solar Energy Systems. The Board is empowered to adopt guidelines for the installation of solar energy systems, subject to Civil Code Section 714. The guidelines may include provisions that encourage owners to place panels and collectors in locations where they are not

visible from the Common Area, and require that accessory conduits and equipment be painted to match exterior adjacent walls.

6.16. Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Property shall be entitled to sever his or her Lot from the Common Area portion of the Property.

ARTICLE VII MAINTENANCE RESPONSIBILITIES

7.1. Association Maintenance Responsibilities. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. No person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

7.2. Owner's Maintenance Responsibilities. Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot, and any portion of the plumbing, electrical, heating, air conditioning, water, sewer, gas, and other utilities exclusively servicing his or her Residence regardless of the location of those components. The Owner shall be responsible for maintaining the Residence and all Improvements on his Lot in a neat and attractive condition including, but not limited to, maintaining, repairing, restoring, or replacing the roof, garage door, exterior doors, eaves, rain gutters, siding, exterior fixtures and exterior paint of all Improvements on the Owner's Lot. The Owner shall be responsible for the maintenance of all of the exterior landscaping on his or her Lot in a neat and attractive condition.

Notwithstanding the foregoing, the Association shall be responsible for maintaining the exterior landscape light fixtures provided by the Declarant. Owners are responsible for the cost of electrical service to the exterior lights on their Lots. The Board of Directors shall have authority to adopt Rules requiring Owners to illuminate exterior lighting. The Board may, in its discretion, annually reimburse an Owner whose electrical meter serves one or more exterior lights used to illuminate clustered mailboxes.

7.3. Recovery of Costs of Certain Repairs and Maintenance.

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility under this Declaration is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Reimbursement Assessment against the offending Owner in accordance with Section 4.4 of this Declaration.

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a

request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.5(b) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 13.6 of this Declaration.

ARTICLE VIII EASEMENTS

8.1. **Maintenance Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the Lots or Common Area, provided that any entry by the Association or its agents onto any Lot, except with respect to the Association's responsibility for the landscaping on the Lots as described in Section 7.1, shall only be undertaken in strict compliance with Section 3.5(b).

8.2. **Other Easements.** Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights of way granted or reserved in, on, over and under the Property and each Lot and Common Area as shown on the Map for the Property.

8.3. **Priority of Easements.** Wherever easements granted to the City are, in whole or in part, coterminous with any other easements, the easements of the City shall have and are hereby granted priority over said other easements in all respects.

8.4. **Utilities and Services.**

(a) **Owners Rights and Duties.** The right and duties of the owners of Lots within the Property with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, mailboxes, and heating and air-conditioning facilities (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

(i) Whenever utilities facilities are installed within the Property, which utility facilities or any portion thereof lie in or upon Lots owned by other than the Owner of a Lot served by said utility facilities, the Owners of any Lot served by said utility facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain said utility facilities as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

(ii) Whenever utility facilities are installed within the Property which utility facilities serve more than one (1) Lot, the Owner of each Lot served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his Lot.

(iii) Whenever utility facilities are installed within the Property, the utility lines for such facilities shall be installed underground.

(b) Easements for Utilities and Maintenance. Easements over and under the Property for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping, and as may be hereafter required or needed to service the Property, are hereby reserved in favor of the Association, together with the right to grant and transfer the same. These easements shall be in favor of and for the benefit of the Association with respect to all Common Area(s).

(c) Association's Duties. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by the utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Lots.

ARTICLE IX PARTY WALLS

9.1. General Rules of Law to Apply. Each wall or fence which is built as a part of the original construction of the Residences upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

ARTICLE X INSURANCE

10.1. Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums being paid out of Common Funds, the following types of insurance:

(a) Fire and Casualty Insurance. A policy of fire and casualty insurance naming the Association as the insured, and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by the insurance carrier, all Common Area and the personal property of the Association for or against the following:

(i) Loss or damage by fire or other risks covered by the standard extended coverage endorsement;

(ii) Loss or damage from theft, vandalism or malicious mischief; and

(iii) Such other risks, perils or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of ARTICLE XI of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Area.

(b) **Public Liability and Property Damage Insurance.** The Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association owned or maintained real or personal property and including, if obtainable, a cross liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than two million dollars (\$2,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) **Directors and Officers Liability Insurance.** The Board shall purchase and maintain a policy of directors and officers liability insurance naming as parties insured the Association, each member of the Board of Directors, each officer of the Association, any manager and any other person as the Board may determine.

(d) **Fidelity Insurance.** The Board shall purchase and maintain a fidelity bond or policy of fidelity insurance covering loss due to wrongful acts or misappropriation by officers, directors, managing agents, or employees which shall contain an endorsement of any person who may serve without compensation.

(e) **Additional Insurance and Bonds.** To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, demolition insurance, flood insurance, earthquake insurance and workers' compensation insurance. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance that it deems necessary or desirable.

10.2. **Responsibility for Deductible Amounts.** The full insurance deductible shall be paid by the party whose acts or omissions are responsible for any damage that results in a property damage claim filed under the Association's insurance policy. If the acts or omissions are those of an Owner or the Owner's tenant, guest or occupant, the Owner shall be responsible for paying the deductible. If it is impossible to determine whose acts or omissions were responsible for the loss, the deductible shall be paid by the party who is responsible for the maintenance, repair and replacement of the component or property where the cause of the damage originated.

10.3. **Coverage Not Available.** In the event any insurance policy, or any endorsement thereof, required by Section 10.1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

10.4. **Copies of Policies.** Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

10.5. **Insurance for Individual Lots.** Each Owner shall obtain and maintain insurance, at his or her sole expense, to protect against any damage to, or loss of the Owner's real or personal property, and the cost of repair or replacement of damaged items, including, but not limited to, the Residence, any Improvements made by an Owner, any personal property, or any exterior items for which such Owner is responsible. The Owner's insurance shall protect against damages to the Lot caused by any Common Area component or any component maintained by the Association or by any failure of such a component. The Owner's policy shall be the primary policy for any claims for damages to or loss of Owner's property. The Association shall not be liable to any Owner or his or her guests or others for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owner's Lot or Residence, unless such damage is caused by the gross negligence of the Association, its Board, officers agents or employees.

ARTICLE XI DAMAGE OR DESTRUCTION

11.1. **Damage or Destruction to Common Area.** In the event any Common Area is ever damaged or destroyed, then, as soon as practicable, the Board of Directors shall (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Area to substantially the same condition as they existed prior to the damage and the itemized price asked for such work, and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

11.2. **Insurance Proceeds Sufficient.** Subject to the provisions of Section 11.1 of this Declaration, if, in the event of damage to or destruction of any portion of any Common Area, the insurance proceeds available to the Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Association may cause such Common Area to be repaired, reconstructed and restored, provided that in the event of a total destruction of the Common Area, the Association shall not be obligated to restore the Common Area to its prior appearance and condition if, in the Board's opinion, architectural or design modifications to the damaged Common Area will result in providing the Members with an improved facility available for substantially the same use and enjoyment as the destroyed Common Area.

11.3. **Insurance Proceeds Insufficient.** In the event that any Common Area is totally or substantially damaged or destroyed or, if, in the event of damage to or destruction of only a portion of the Common Area, the insurance proceeds available to the Association are insufficient in an amount exceeding \$10,000 to cover the estimated cost of repair, reconstruction and restoration, then the Association shall repair, reconstruct and restore the damaged or destroyed Common Area, and specially assess all Owners for such additional funds as may be needed for such purpose, unless Owners entitled to vote fifty percent (50%) of the total voting power of the Association determine not to repair, reconstruct or restore the damaged or destroyed Common Area but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Association for such purpose, to demolish and remove the damaged or destroyed

Improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Board of Directors may determine.

11.4. Damage to Lots.

(a) If a Lot, residence, or Improvement on a Lot is damaged or destroyed by fire or other casualty, the Owner shall proceed with due diligence to repair or reconstruct the Lot, Residence or Improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstructions or as authorized by the Board.

(b) Unless the Board agrees to a longer time period, repair or reconstruction must commence within ninety (90) days after damage or destruction, and must be completed within one hundred eighty (180) days after such date, subject to delays that are beyond the Owner's control.

(c) Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to make safe any hazardous conditions resulting from the damage or destruction.

ARTICLE XII
CONDEMNATION

12.1. Association as Trustee for Owners. If all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be payable to the Association as trustee for all Owners according to the loss or damages to their respective interest in the Common Area. The Association, acting through its Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints the Association as his or her attorney in fact for such purposes.

ARTICLE XIII
BREACH AND DEFAULT

13.1. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights of way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest. Before initiating an enforcement action as defined in Civil Code Section 5925, seeking declaratory, injunctive or writ relief or that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Code of Civil Procedure Sections 116.220 and 116.221, the Association shall first comply with the provisions of Civil Code Section 5930 and following, or comparable superseding statutes, relating to alternative dispute resolution.

13.2. Nuisance. Without limiting the generality of the foregoing ARTICLE XIII, Section 13.1, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

13.3. Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

13.4. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

13.5. Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights of way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

13.6. Rights and Remedies of the Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Area or suspension of the Owner's voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 13.6.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of the California Civil Code Section 5975 or otherwise by law.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate.

(c) Definition of "Violation." A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the

violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Property at the cost of the responsible Owner.

(d) Hearings. When the Board of Directors is to meet to consider or impose discipline on a Member, the Board shall notify the Member in writing, by either personal delivery or first-class mail, at least 10 days prior to the meeting. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a Member may be disciplined, and a statement that the member has a right to attend and may address the board at the meeting. The Board of Directors of the Association shall meet in executive session if requested by the Member being disciplined. If the Board imposes discipline on a Member, the Board shall provide the Member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action.

(e) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

ARTICLE XIV NOTICES

14.1. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: Montage at Mission Hills at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

14.2. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co owners, to such partnership, or to such corporation, as the case may be.

14.3. Deposit in United States Mails. All notices and demands served by mail shall be by first class or certified mail, with postage prepaid, and shall be deemed delivered four days after deposit in the United States mail in Riverside County, California.

ARTICLE XV
NO PUBLIC RIGHTS IN THE PROPERTY

15.1. No Gift or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Property to the general public or for any public use or purpose whatsoever.

ARTICLE XVI
MORTGAGE PROTECTION

16.1. Assessment Lien Subordinated. Any lien created or claimed under the provisions of Section 4.8, above, shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Lot by judicial foreclosure or by exercise of power of sale contained in the Mortgage shall be obligated to cure any breach of this Declaration by a former Owner of such Lot or shall be liable for any unpaid Assessments made against the Lot which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under the provisions of Section 4.8, above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such Recorded Mortgage.

16.2. Amendment of This Declaration. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 16.1, above, which is made in good faith and for value, if such Mortgage is Recorded and notice of the delivery and Recording thereof is given to the Association prior to the Recording of such amendment.

16.3. Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (a) giving written notice to the defaulting Owner; (b) Recording a Notice of Default in accordance with California Civil Code section 2924; and (c) delivering a copy of such Recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

16.4. Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Lot. The Association or its successors and assigns shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes provided for in this Declaration as it may be amended from time to time with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

16.5. Exchange of Information. The Association shall, at the written request of any Mortgagee, insurer or guarantor, notify such party of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Properties or the Lot(s) securing the Mortgage;
- (b) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage;

(c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees (see Section 16.11(a), below, for definition of "Eligible Mortgagee").

To be entitled to receive this information, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Lot(s) securing the Mortgage. Any Mortgagee of any Lot is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments of such indebtedness.

16.6. Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor. The holders of first Mortgages on the Lots shall have the right (but not the obligation), jointly or singly: (a) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Area facilities; (b) to pay overdue premiums on casualty insurance policies for the Common Area facilities; and (c) to secure and pay for new casualty insurance coverage on the Common Area facilities upon the lapse of any such policy, in the amount and against the risks provided for in Section 10.1 above. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument evidence its agreement to the provisions of this section as the same affects the Mortgage held by such Mortgagee.

16.7. Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgage on any Lot shall have the right, upon written request to the Association, to:

(a) Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;

(b) Require the Association to provide an audited statement for the preceding fiscal year: at no expense to the requesting entity; and

(c) Receive written notice of all membership meetings and designate a representative to attend all such meetings.

16.8. Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Lot or on the Common Area, upon written request by the first Mortgagee, thirty (30) days prior written notice of: (a) abandonment or termination of the Association; (b) the effective date of any proposed material amendment to the Declaration; (c) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of the Property; (d) any condemnation or eminent domain proceeding; and (e) any extensive damage to or destruction of any Improvements located in or on the Common Area.

16.9. Superiority of Mortgage to Condemnation Proceeds. If any Lot, or portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent

domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of the Lots or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement.

16.10. Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the Improvements on any Lot, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of the Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

16.11. Approval of Material Amendments or Proposed Actions.

(a) Material Amendments. In addition to the approvals required by Section 17.1 below, Eligible Mortgagees who represent at least fifty one percent (51%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- (i) voting rights;
- (ii) assessments, assessment liens or the priority of assessment liens;
- (iii) reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (iv) convertibility of Lots into Common Area and vice versa;
- (v) annexation or deannexation of property to or from the Properties;
- (vi) insurance or fidelity bonds;
- (vii) leasing of Lots;
- (viii) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (ix) Adopt any provisions that expressly benefit Mortgagees, insurers or guarantors.

(b) Certain Restrictions Affecting the Association. Notwithstanding any other provisions of this Declaration, without the prior written consent of at least fifty-one percent (51%) of the Eligible Mortgagees, such percentage to be based upon the total of number of Lots so mortgaged, with each such Mortgagee entitled to one vote for each Lot, the Association shall not:

- (i) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any Improvements thereon (except that the granting of any

easement for public utilities, or for other public purposes consistent with the intended use of the Properties, shall not be deemed a "transfer" as that term is used in this subparagraph (a));

(ii) Change the method provided for in this Declaration of determining the Assessments or other charges which may be assessed against an Owner or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) By act or omission, change, waive or abandon the scheme of maintenance and repair of the Properties, or the enforcement thereof, as provided for in this Declaration;

(iv) Fail to maintain fire and extended coverage insurance on the Common Area facilities in the amount and against the risks provided for in Section 10.1 above; or

(v) Use any insurance proceeds received as a result of the loss or damage to the Common Area facilities for any purpose other than the repair, replacement or reconstruction of such Common Area facilities.

(vi) Determine to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;

(vii) Restore or repair of Properties (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;

(viii) Take any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs.

(c) Termination. In addition to the approvals required by Section 17.1 below, Eligible Mortgagees who represent at least sixty seven percent (67%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any proposed termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Properties.

(d) Implied Approval. Each Eligible Mortgagee that receives notice of a proposed amendment or termination of this Declaration by certified or registered mail, with a "return receipt" requested, shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within thirty (30) days of receiving the notice.

16.12. Declaration to Conform With Mortgagee Requirements. It is the intent of this Article that this Declaration, the Articles of Incorporation, the Bylaws and the Properties in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Veterans' Administration.

ARTICLE XVII
AMENDMENT OF DECLARATION

17.1. Amendment in General. This Declaration may be amended or revoked in any respect by the vote of not less than sixty-seven percent (67%) of the Members entitled to vote. Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

17.2. Effective Date of Amendment. The amendment will be effective upon the recording in the Office of the Recorder of Riverside County a Certificate of Amendment, duly executed and certified by the president of the Association setting forth in full the amendment so approved and that the approval requirements of Section 17.1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or mortgage recorded prior to the recording of such amendment.

17.3. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE XVIII
GENERAL PROVISIONS

18.1. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights of way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60 year term or any such 10 year extension period, a recordable written instrument, approved by seventy five percent (75%) of all Members terminating this Declaration shall be recorded with the County Recorder of Riverside County.

18.2. Priority of First Deed of Trust. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first mortgage or deed of trust on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

18.3. Construction of Declaration.

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

OFFICERS' CERTIFICATE

The undersigned, President and Secretary of Montage at Mission Hills, Inc., hereby certify under penalty of perjury that the above Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Montage at Mission Hills was approved by at least sixty-seven percent (67%) of the Owners, and by at least fifty-one percent (51%) of Eligible First Mortgagees, in accordance with the terms of the Original Declaration, evidence of which is on file in the office of the Association.

Dated: Jan 12, 2018

MONTAGE AT MISSION HILLS, Inc., a
California Nonprofit Mutual Benefit Corporation

By: Lloyd Nickerson, Jr.
Lloyd Nickerson, President

Dated: Jan 12, 2018

MONTAGE AT MISSION HILLS, Inc., a
California Nonprofit Mutual Benefit Corporation

By: Leo Schlesinger
Leo Schlesinger, Secretary

<<<<ACKNOWLEDGMENTS ON FOLLOWING PAGE >>>>

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On Jan. 12, 2018, before me, Liz Ward, a Notary Public, personally appeared Lloyd Nickerson, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Liz Ward

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On Jan. 12, 2018, before me, Liz Ward, a Notary Public, personally appeared Leo Schlesinger, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Liz Ward

EXHIBIT "A"

SOCIAL/FITNESS MEMBERSHIP AGREEMENT

THIS SOCIAL/FITNESS MEMBERSHIP AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 2000 by and between Montage at Mission Hills Homeowners' Association, Inc., (the "Association") and MISSION HILLS COUNTRY CLUB, INC., A CALIFORNIA CORPORATION ("MHCC").

RECITALS:

- A. The Association is a homeowners' association formed for the purpose of providing a governing body for the property owners of the individual lots on that certain real property located in Cathedral City, Riverside County, California, comprising of Tract Map 29771 as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").
- B. MHCC is the owner of the country club in Rancho Mirage, California known as "Mission Hills Country Club" consisting of, among other things, three (3) 18-hole golf courses, a driving range, a golf clubhouse, a tennis/athletic facility (including tennis clubhouse) and such additional improvements as may be constructed in the future, as the foregoing may be modified from time to time (collectively referred to as the "Club").
- C. Pursuant to that certain Declaration of Covenants, Conditions and Restrictions (the "Declaration"), recorded March 18, 2002 as Instrument No. 2002-136401 recorded in the Official Records of Riverside County, California, all Owners (hereinafter) defined) are automatically members of the Association.
- D. The Association desires to contract with MHCC to make certain preferential membership privileges generally available to Owners ("Social/Fitness Memberships" or individually, a "Social/Fitness Membership"). And MHCC is willing to do so subject to and upon the terms and conditions hereof.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Association and MHCC hereby agree as follows:

1. **Definitions.** The following terms when used in this Agreement shall have the meaning indicated:
 - (a) "Declarant" shall mean Montage at Mission Hills Homeowners' Association, Inc.
 - (b) "Development" shall mean the property covered by the Declaration, together with such additional real property, whether or not contiguous or adjacent, which may hereafter be annexed to and included under the Declaration and which is plotted and developed as lots for the constructions of single family homes.
 - (c) "Lot" shall mean a parcel of single family residential real property comprising a portion of the Development which is described and referenced by a lot and tract and/or parcel number on a duly recorded tract or parcel map in the Map Records of Riverside County, California.

- (d) **"Monthly Dues"** shall mean an amount equal to the product of the total number of Qualified Lots multiplied by the Monthly Dues Assessment.
- (e) **"Monthly Dues Assessment"** shall mean the monthly charge set by MHCC for making certain privileges of the Club available to Owners of Qualified Lots as determined from time to time by MHCC in its sole discretion, but subject to the limitations set forth in Paragraph 5(b).
- (f) **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but excluding persons or entities who hold an interest merely as security for the performance of an obligation.
- (g) **"Qualified Lot"** (collectively, the **"Qualified Lots"**) shall mean any Lot upon which a single family residence has been constructed and initially occupied by an Owner or a tenant of an Owner, regardless of whether the residence subsequently becomes unoccupied. For purposes of this Agreement, a residence shall be deemed occupied (regardless of whether it is actually occupied at or before such time) as of the first (1st) day of the month immediately following the month in which a deed for the Lot is recorded or a lease covering the Lot and/or residence is executed.
- (h) **"Social Member"** shall mean an individual who holds a Social/Fitness Membership in the club
- (i) **"Unqualified Lot Owner"** shall mean an Owner of a Qualified Lot who completes the required application and applies for, but is not accepted by MHCC as, a Social Member, provided, however, that an Unqualified Lot Owner shall not include anyone who while an Owner of a Qualified Lot in the Development, has had membership privileges in the Club suspended or terminated.

2. Social/Fitness Memberships.

- (a) Each Owner of a Qualified Lot upon becoming a member of the Association, shall have a right and option to become a Social Member pursuant to the terms of this Agreement, subject to the following provisions:
 - (i) The Qualified Lot must be subject to assessment under the Declaration at the time the Owner elects to become a Social Member.
 - (ii) The Owner must complete the membership application furnished by MHCC and be accepted into membership in the same manner as all other candidates for membership in the Club.
 - (iii) At the option of MHCC, Owner may be required to furnish proof of ownership of a Qualified Lot.
- (b) If a Qualified Lot is owned by more than one individual, only one of the individuals shall be entitled to exercise the option to become the Social Member for such Qualified Lot. Such individual shall be designated by a written notice to the Association and MHCC signed by all individuals owing the Qualified Lot. In the absence of such an agreement, the individual whose name first appears on the deed evidencing the current ownership of the qualified Lot shall be the individual entitled to exercise such option. The tenant of a residence on a Qualified Lot shall be entitled to exercise to become the Social Member.

- (c) All Owners of Qualified Lots that are entities and not individuals shall not be entitled to become Social members, but each Owner may designate one (1) individual who resides on the Qualified Lot owned by such Owner to exercise the option to become a Social member by giving written notice of such designation to MHCC. Such Owners shall be liable with their designees to MHCC for all charges incurred by the designees. If any designee fails to pay any such charges, the designating Owner shall pay the same upon written demand by MHCC.
- (d) Any Owner or authorized designees desiring to exercise the option to become a Social Member shall do so by giving written notice to MHCC. Any notice given by an authorized designee must include the designation required or permitted in accordance with the foregoing provisions. All designees shall be required, to the extent applicable, to comply with all membership criteria and conditions required of Owners herein.

3. Privileges of Social/Fitness Membership.

- (a) An Owner of a Qualified Lot who becomes a Social Member will be accorded all of the privileges of membership accorded by MHCC from time to time to other holders of Social/Fitness Memberships. As of the date of this Agreement, a Social/Fitness Membership allows the Social Member to use the swimming, athletic, croquet, volleyball, dining and social facilities of the Club. Subject to the maintenance of acceptable credit, Social Members shall be allowed charging privileges at the Club. Social/Fitness Memberships do not entitle the holders to use the golf or tennis facilities. Only Owners of Qualified Lots and their authorized designees (as provided in Paragraph 2 (c) above) shall be entitled to be Social Members pursuant to the terms of this Agreement, and the Social/Fitness Memberships are nontransferable.
- (b) The spouse and any unmarried children under the age of twenty-two (22) who reside in the Social Member's residence shall be entitled to the same privileges to use the facilities of the Club as the Social Member. Guest privileges of Social Members (including the payment of guest fees) shall be governed by the bylaws and rules and regulations of the Club, as amended from time to time.
- (c) Except as otherwise provided in this Agreement, a Social Member shall be subject to the terms, conditions and restrictions of the bylaws and rules and regulations of the Club (as they may be changed or modified from time to time), including, without limitation, the right of MHCC to suspend or terminate a member's use of the Club for the violation of such bylaws or rules and regulations by the member or the members spouse, children or guests. Suspension or termination of a Social member's membership privileges shall not excuse the payment of full amount of the Social/Fitness Membership Assessment payable by any Owner pursuant to the terms of the Declaration, nor shall the suspension reduce the amount of Monthly Dues payable by the Association.
- (d) An Owner of a Qualified Lot (or authorized designees) acquiring a Social/Fitness Membership shall not have to pay any initiation fee or monthly dues directly to MHCC for the Social/Fitness Membership during the term of this Agreement; it being understood that such fees are covered by the Monthly Dues paid by the Association.
- (e) A Social Member shall be allowed to participate with other members of the Club in the Associate Club International Program ("ACI Program") to the extent that the Club is a participant therein. The ACI Program allows members of a participating club to use facilities of other participating clubs. Such use is subject to the terms, conditions and restrictions (including radius restrictions) of the ACI Program and of clubs participating therein (as such terms, conditions and restrictions may be changed or modified from time to time) and to the

payment of all usage fees as may be required under the rules and regulations of particular participating clubs. The payment of additional dues or fees may be required as a condition to participation in the ACI Program.

- (f) An Owner shall automatically cease to be a Social Member upon ceasing to be an owner of a Qualified Lot unless the Owner elects to continue membership in the Club independent of the terms of this Agreement. Any designated Social Member who is a resident of a home on a Qualified Lot automatically ceases to be a Social Member upon ceasing to be a resident of such home unless the designee elects to continue membership in the Club independent of the terms of this Agreement. The fact that any Owner shall cease to be a Social Member under the terms of this Agreement shall not reduce the Monthly Dues payable by the Association. In order to continue membership as a Social Member independent of the terms of this Agreement, the Owner or authorized designee must pay MHCC the standard initiation deposit for a Social/Fitness Membership at that time and begin paying the prevailing monthly dues for Social Members who are not Owners of Qualified Lots.
4. **Membership Dues Credit:** In the event that an Owner of a Qualified Lot shall contract with MHCC for a membership other than a Social/Fitness Membership, such Owner shall receive a credit against monthly dues applicable for such additional membership of an amount equal to the Monthly dues applicable for such additional membership of an amount equal to the Monthly Dues Assessment. When an Owner who has elected a membership class or category other than a Social/Fitness Membership ceases to be an Owner of a Qualified Lot, such credit shall terminate and such individual shall be required to pay the full dues for such membership.
5. **Payments by the Association.**
- (a) On the first day of each calendar month during the term of this Agreement, the Association shall pay MHCC, in advance as dues for the use of the Club, the Monthly Dues. The full amount of Monthly Dues shall be payable by the Association regardless of the fact that one or more Owners may elect not to become Social Members. Monthly Dues for partial months shall be prorated on a weekly basis.
- (b) Club Owner agrees that the Monthly Dues Assessment shall remain at \$40 per month until the third anniversary of the date of this Agreement, at which time it may be adjusted by Club Owner. The Monthly Dues Assessment shall not, however, be adjusted on an annual percentage basis by more than the percentage increase in the monthly dues charged by MHCC to holders of Social/Fitness Memberships who are not Owners of Qualified Lots for the year in question. The maximum increase shall be computed on the basis of MHCC's standard quoted monthly dues for Social/Fitness Memberships.
- (c) On or before the fifteenth (15th) day of each month during the term of this Agreement, the Association shall furnish MHCC with a list (the "Qualified Lot List") containing the addresses of all Qualified Lots and the names of the Owners thereof as of the last day of the preceding month. Further, as the Association receives notice of a change in ownership of a Qualified Lot, it shall give notice of the name of the new Owner thereof to MHCC. The Association also shall give notice to MHCC when any Owner of a Qualified Lot ceases to become a member of the Association. For purposes of determining Monthly Dues for a given month, the number of Qualified Lots shall be determined by reference to the Qualified Lot List required to be furnished in the preceding month.
- (d) Notwithstanding the payment provisions in Paragraph 5(a) above, the Association shall be entitled to a credit against Monthly dues for each Unqualified Lot Owner shall not be subject to any Monthly Dues Assessment by the Association.

6. Term.

- (a) This Agreement shall be for a term of ten (10) years commencing on the date hereof unless sooner terminated as provided herein, provided, however, that such term shall automatically be extended for four (4) additional terms of ten (10) years each (collectively, the "Extended Terms" and each an "Extended Term" unless terminated by MHCC upon written notice given to the Association at least sixty (60) days prior to the expiration of the initial term or any Extended Term as the case maybe.
- (b) In the event that MHCC elects to terminate this Agreement prior to the expiration of all of the Extended Terms, each Owner of a Qualified Lot who is a Social Member may elect to continue membership in the Club upon the payment of the then prevailing monthly dues charged by MHCC to Social members at the club. Those desiring to continue membership shall not be charged an additional initiation fee or deposit as condition to continuation.
- (c) At any time within the (90) days following the commencement of any Extended Term, the Association shall have the right to terminate this Agreement if, but only if, the Association shall first have obtained the approval of such election to terminate from not less than 66.67% of all Owners of Qualified Lots as provided in the Declaration. Such election must be evidenced by signed ballots from all such Owners executed during the ninety (90) day period following the commencement of the then current Extended Term. Following an election by the Association to terminate, each Social/Fitness Membership acquired pursuant to the terms of this Agreement shall terminate effective as of the termination date of this Agreement unless the holder thereof elects to remain a Social Member by paying MHCC the standard initiation deposit for a social/fitness memberships at that time and agreeing to pay the then prevailing dues charged by MHCC for such membership, provided, however, that no such additional sum shall be payable by an Owner who previously paid an initiation deposit or joining fee to MHCC and has maintained a continuous membership in the Club.

7. Social/Fitness Membership Assessment.

- (a) On or before October 1st of each calendar year, MHCC will notify the Association of the Monthly Dues Assessment set by MHCC for the upcoming calendar year. If MHCC shall fail to notify the Association of such amount by the specified date, the Monthly Dues Assessment shall be deemed to be the amount of then current Monthly Dues Assessment. Following the determination of the Monthly Dues Assessment, the Association will assess and collect from Owners of Qualified Lots the "Social/Fitness Membership Assessment" (as defined in the Declaration) pursuant to and in accordance with the Declaration. On the first day of each and every month then after during the term of this Agreement, the Association shall provide to MHCC a list of all Owners who are delinquent in the payment of the Social/Fitness Membership Assessment, which list also shall set forth the amounts of such delinquencies. In addition to all rights and remedies available to MHCC hereunder, at law or in equity, MHCC may suspend the Social/Fitness Membership and other privileges of any Owner who is delinquent in the payment of the Social/Fitness Membership Assessment during the period of any such delinquency.

(b) MHCC and its agents shall have the right to audit and inspect the Association's records concerning Social/Fitness Membership Assessments at all reasonable times during normal business hours. MHCC shall bear the cost of any such audit.

8. **Default by MHCC.** MHCC shall be in default hereunder (a "MHCC Default") if MHCC shall fail to comply with any term, provision or covenant of this Agreement and such failure shall continue for thirty (30) days after written notice thereof to MHCC specifying in detail the term, provision or covenant not performed and the action required to cure the failure, provided that, if MHCC takes action to cure such failure within such thirty (30) day period, but is unable, by reason of the nature of the work involved, to cure the same within such period, MHCC shall not be deemed to have committed a MHCC Default if MHCC thereafter diligently pursues the curing of the same.

9. **Remedies of the Association.**

(a) In the event a MHCC Default shall have occurred and be continuing, the Association shall have the right at its election, then or any time thereafter while such failure shall continue, to pursue any one or more of the following remedies:

(i) Seek specific performance of the defaulting party's obligations or injunctive relief, as a as applicable, and

(ii) Bring a claim for damages.

(b) Subject to Paragraph 12, no remedy granted to the Association is intended to be exclusive of any other remedies herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by the Association to exercise any right accruing upon a default by the Association which continues beyond the applicable cure period shall impair the Association's exercise of any right or shall be construed to be a waiver of any default or acquiescence thereto.

10. **Default by the Association.** The Association shall be in default hereunder (an "Association Default") if the Association shall fail to comply with any term, provision or covenant of this Agreement and such failure shall continue for thirty (30) days after written notice thereof to the Association specifying in detail the term, provision or covenant not performed and the action required to cure the failure, provided that, if the Association takes action to cure such failure within such (30) day period, but is unable, by reason of the nature of the work involved, to cure the same within such period, the Association shall not be deemed to have committed an Association Default if Association thereafter diligently pursues the curing of the same.

11. **Remedies of MHCC.**

(a) In the event a Association Default shall have occurred and be continuing MHCC shall have the right at its election, then or at any time thereafter which such failure shall continue to pursue any one or more of the following remedies:

(i) Seek specific performance of the defaulting party's obligations or injunctive relief, and as applicable, and

(ii) Bring a claim for damages.

- (b) In addition to the remedies provided in Paragraph 10, above, in the event the Association shall fail to pay the Monthly Dues in full when due, MHCC may, as provided in Paragraph 6 hereof, suspend the Social/Fitness Membership and other privileges in the Club of any Owner who failed to pay the Social/Fitness Membership Assessment when due in accordance with the terms of the Declaration. Further, if the Association shall fail to pay the Monthly Dues when due and payable and the Association shall have collected from Owners of Qualified Lots the Social/Fitness Membership Assessment, but failed to pay to MHCC all amounts so collected. MHCC may suspend Social/Fitness Membership privileges of all Owners until such time as the Association pays to MHCC the full amount of the Social/Fitness Membership Assessment collected from all Owners.
- (c) All monthly facilities fees, monthly dues and other sums not paid by the Association when due shall bear interest at the rate which is the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum permissible rate of interest allowed by applicable law.
- (d) Subject to Paragraph 12, no remedy granted to the MHCC is intended to be exclusive of any other remedies herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by the MHCC to exercise any right accruing upon a default by the Association which continues beyond the applicable cure period shall impair the MHCC's exercise of any right or shall be construed to be a waiver of any default or acquiescence thereto.

12. **No Termination.** In not event shall default by either party hereunder cause a termination of this Agreement prior to the expiration of the terms hereof.

13. **Amendments.** This Agreement may be amended only by written instrument executed by the Association and MHCC.

14. **Changes by MHCC.** MHCC shall have the right at any time and from time to time to change, amend or modify the classes of membership in the Club, the fees and dues applicable thereto and the bylaws, rules and regulations of the Club, provided, however, that during the term of this Agreement, MHCC shall not without the prior written consent of the Association eliminate Social/Fitness Memberships.

15. **Notices.** Any notice, approval, acceptance or other communication required or permitted hereunder shall be in writing and may be delivered personally, by facsimile transmission or sent by United States Mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

To the Association:

Mario Gonzales
68936 Adelina Road
Cathedral City, CA 92234

With a copy to:

W. Curt Ealy, Esq.
Selzer, Ealy, Hemphill & Blasdel, LLP
777 E. Tahquitz Canyon Way, Ste. 328
Palm Springs, CA 92262

To MHCC:

Mission Hills Country Club, Inc.
34-600 Mission Hills Drive
Rancho Mirage, CA 92270
Attn: Tom Catanzarite, General Manager

With copies to:

Mission Hills Country Club, Inc.,
P.O. Box 819012
Dallas, Texas 75381-9012
Attn: President

Mission Hills Country Club, Inc.
P.O. Box 819012
Dallas, Texas 75381-9012
Attn: General Counsel

Or to such other address designated by the parties provided above. Any such notice shall be deemed effective only upon receipt, or if sent by certified or registered U.S. Mail, return receipt requested, and refused upon the date of refusal as shown on the return receipt.

16. **No Modification of Declaration.** The Association and Declarant agree that no modifications, amendments, changes, additions or deletions to the Declaration that adversely affect either the ability of the Association to perform its obligations under this Agreement, or the rights of MHCC under this Agreement will be made without the prior written consent of MHCC. Declarant further agrees to bind any successor or assigns of any of their rights under the Declaration to the restrictions contained in this Paragraph.
17. **Limited Liability of the Association.** The Association shall have no liability to MHCC or any Social Member for (i) violation by any Social Member of the bylaws and rules and regulations of the Club, (ii) the failure of any Social Member to comply with the Club's membership application or make any payments due directly to Club, and (iii) the failure of MHCC to honor the terms of or provide Social/Fitness Membership to any Qualified Lot Owner or authorized designee.
18. **Arbitration.** Any dispute or controversy arising out of, or relating to this Agreement, or the breach thereof, involving claims in excess of the jurisdictional limits of the small claims court or its equivalent in Riverside County, California, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its rules. Any judgment rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be heard in the Riverside County, and legal issues shall be decided under the laws of the State of California. The parties shall be entitled to reasonable, but limited, discovery prior to the Arbitration. The initiating party shall give written notice to the other party of its intention to arbitrate, which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, and the remedy sought, and shall file at the office of the American Arbitration Association nearest to the Club three (3) copies of the notice and three (3) copies of this arbitration provision, together with the appropriate filing fee, as provided by the American Arbitration Association. The arbitrator shall be selected by using the listing process under the American Arbitration Association's rules. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator all of its costs and expenses. "Costs and expenses" shall mean all reasonable pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, witness fees, and attorney's fees. By agreeing to be bound by arbitration, the parties are intending to not only waive any right of trial by jury, but also to waive any rights to appeal the arbitration finding.

19. **Attorneys' Fees.** In the event of any arbitration action or proceeding brought by either party against the other arising out of this Agreement or any court proceedings to enforce an arbitration award, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred in such action.
20. **Further Instruments.** MHCC will, whenever reasonable requested by the Association and the Association will whenever reasonably requested by MHCC, execute acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and other instruments and documents which may be reasonably necessary in order to complete the transactions contemplated hereby and to carry out the terms and provisions of this Agreement.
21. **Independent Family.** The Association recognizes and acknowledges that it is looking to MHCC for the performance of the obligations under this Agreement. The Association further recognizes and acknowledges that no other entity or entities, including Club Corp USA., Inc or any of its affiliated entities is in any manner liable or responsible for the obligations and liabilities of MHCC under this Agreement. Nothing herein is intended to exempt any person or entity from liability under the Uniform Fraudulent Transfer Act, the Federal Bankruptcy Code and any other similar law. It is agreed and understood between the parties hereto that the parent and affiliated entities of MHCC may provide services for fee to MHCC and that the providing of such services for a fee and the actions taken in providing such services shall, of themselves, in no manner be constructed to constitute the undertaking by such parent or affiliated entity of any obligation, duty or liability under this Agreement.
22. **No Third Party Beneficiaries.** Nothing herein contained shall be deemed to establish any rights of third parties against the parties hereto; it being the intent that the rights and obligations set forth herein are those of the parties alone, with no third party beneficiary rights intended.
23. **No Partnership or Joint Venture.** Nothing contained in this Agreement shall be deemed or constructed by the parties hereto or by any third party as creating the relationship of (i) principal and agent (ii) a partnership, or (iii) a joint venture between the parties.
24. **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in the making proof hereof it shall only be necessary to produce one such counterpart.
25. **Time of the Essence.** Time is of the essence with respect to the performance of all obligations provided herein and the consummation of all transactions contemplated hereby.
26. **Governing Law.** This Agreement shall be governed construed, enforced and interpreted in accordance with the laws of the State of California and applicable federal law.
27. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns, provided, however, that this Agreement shall not be assigned by the Association without the prior written consent of MHCC.
28. **Entire Agreement.** This Agreement constitutes the entire Agreement among the parties and may not be modified or amended except by written instrument executed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MHCC

MISSION HILLS COUNTRY CLUB, INC.

By:
Name: _____
Title: _____

THE ASSOCIATION:

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Lot 1 through 128 of Tract No. 29771, as shown by map on file in Book 311 Pages 46 through 53, inclusive of Maps, Records of Riverside County, California.

1 MARGARET G. WANGLER (SBN 134965)
 gwangler@fiorelaw.com
2 JULIE R. BALBINI (SBN 211668)
 jbalbini@fiorelaw.com
3 FIORE, RACOBS & POWERS
4 A Professional Law Corporation
5 74-130 Country Club Drive, Suite 102
6 Palm Desert, California 92260
7 Telephone: (760) 776-6511
8 Facsimile: (760) 776-6517

9 Attorneys for Petitioner MONTAGE AT MISSION
10 HILLS, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF RIVERSIDE, PALM SPRINGS COURT

13 IN RE:
14 MONTAGE AT MISSION HILLS, INC.
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 Petitioner.

Case No. PSC 1706584

Judge: Hon. James T. Latting
Dept.: PS1

**~~PROPOSED~~ ORDER GRANTING
PETITION TO REDUCE PERCENTAGE
OF AFFIRMATIVE VOTES NECESSARY
TO AMEND THE DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS**

[Civil Code § 4275]

Date: January 11, 2018
Time: 8:30 a.m.
Dept.: PS1

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JAN 11 2018

K. CHANK

ORDER

1
2 The petition of MONTAGE AT MISSION HILLS, INC. ("ASSOCIATION") to reduce the
3 percentage of affirmative votes to amend the Declaration of Covenants, Conditions, Restrictions and
4 Reservation of Easements for Montage at Mission Hills, recorded on August 1, 2014, as Document
5 No. 2014-0289957, in the Official Records of Riverside County ("CC&Rs") came on regularly for
6 hearing on January 11, 2018, at 8:30 a.m., in Department PS1 of the above-referenced Court, the
7 Honorable James T. Latting, judge presiding. Margaret G. Wangler of Fiore, Racobs & Powers, A
8 PLC, appeared on behalf of the Petitioner.

9 Upon reading and considering all of the evidence presented to the Court, the proof of service
10 of mailing of the notice of the hearing on the petition to all the ASSOCIATION'S members, and the
11 arguments of counsel, the Court finds as follows:

12 That the ASSOCIATION'S Verified Petition met all the requirements of Civil Code Section
13 4275;

14 That the ASSOCIATION gave at least 15 days' written notice of the January 11, 2018, Court
15 hearing to all members of the ASSOCIATION, by first class mail;

16 That the balloting on the Amended and Restated Declaration of Covenants, Conditions,
17 Restrictions, and Reservation of Easements for Montage at Mission Hills ("Proposed Amendment")
18 was conducted in accordance with all applicable provisions of the ASSOCIATION'S governing
19 documents;

20 That the ASSOCIATION made a reasonably diligent effort to permit all eligible members of
21 the ASSOCIATION to vote on the Proposed Amendment;

22 That owners having at least sixty-seven percent (67%) of the total voting power in the
23 ASSOCIATION voted in favor of the Proposed Amendment;

24 That the Proposed Amendment is reasonable; and

25 That granting the Verified Petition is not improper for any reason stated in Civil Code Section
26 4275(e).

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IT IS ORDERED, therefore, that the Verified Petition is granted and the proposed Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Montage at Mission Hills is approved based upon the affirmative votes actually cast for the same, subject to the following conditions:

The Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Montage at Mission Hills shall be recorded, together with this Order; and

Within a reasonable time thereafter, the ASSOCIATION shall mail a copy of the recorded Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Montage at Mission Hills to each member of the ASSOCIATION, together with a statement that the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Montage at Mission Hills has been recorded pursuant to Civil Code Section 4275(g).

IT IS SO ORDERED.

DATED: JAN 11 2018

James T. Latting

Honorable James T. Latting
Judge of the Superior Court