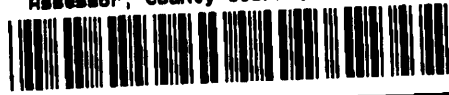


Recording Requested By:

STEWART TITLE-Riverside

And When Recorded Mail to:

FORD DAVALL GROUP, LLC  
3002 Dow Avenue, Suite 142  
Tustin, California 92780



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FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
MONTAGE AT MISSION HILLS - TRACT NO. 29771

501196458

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Montage at Mission Hills ("First Amendment") is made and executed this 2<sup>nd</sup> of May, 2002 by FORD - DA VALL GROUP, LLC, a California Limited Liability Company ("Declarant"), being the owner of that certain real property subject to this First Amendment.

RECITALS

WHEREAS, a Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Montage at Mission Hills ("Declaration") was recorded March 18, 2002 as Instrument No. 2002-136401, Official Records of Riverside County, affecting that certain real property in Cathedral City of said County, State of California described as:

Lots 20 through 32, inclusive, 73 through 75, inclusive, 102 through 105, inclusive, and Lettered Lots I, K, N, O, P, and Q 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.

WHEREAS, no Lots have been conveyed in the property,

WHEREAS, pursuant to Article XV, Section 15.02(a), of the Declaration, Declarant desires to amend the Declaration,

NOW, THEREFORE, the Declaration is hereby amended as follows:

The following paragraph is added to Article IV, Section 4.02, Membership, as subparagraph (b):

"(b) 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 hereto as Exhibit "A"."

EXCEPT AS SO AMENDED, the Declaration shall be and remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed the foregoing First Amendment to the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Montage at Mission Hills, Tract No. 29771.

"Declarant"

FORD - DAVALL GROUP, LLC,  
a California Limited Liability Company

X  
By: [Signature]  
its:

X  
By: \_\_\_\_\_  
its:

STATE OF CALIFORNIA )  
COUNTY OF Orange ) ss.

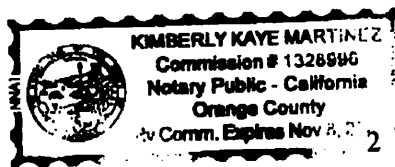
On May 2, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared:

Dan B. Staehly

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

WITNESS my hand and official seal.

(SEAL)



[Signature]  
Notary Public



PENALTY OF PERJURY FOR NOTARY SEAL

GOVERNMENT CODE 27361.7

I certify under the penalty of perjury that the Notary Seal on the document to which this statement is attached reads as follows:

NAME OF NOTARY KIMBERLY KAYE MARTINEZ  
DATE COMMISSION EXPIRES 11-8-2005  
PLACE OF EXECUTION ORANGE COUNTY

DATE: 5-20-02

Kathy Crawford  
(Signature)

Stewart Title  
(Firm name-if any)



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 (15<sup>th</sup>) 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 1<sup>st</sup> 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. One 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 stature. 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 on 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.



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05/21/2002 08:00  
14 of 14

1-602-881-1866

RECEIVED

OFFICE OF THE ATTORNEY GENERAL  
STATE OF NEW YORK