

When recorded, return to:

Ekmark & Ekmark, L.L.C.  
6720 N. Scottsdale Road, Suite 261  
Scottsdale, Arizona 85253

03664-2-1-1--  
Palumbo

**Certificate of Amendment to  
Declaration of Covenants, Conditions, and Restrictions  
for Montelena  
(Montelena Master Community Association)**

Montelena Master Community Association ("Association") is governed by the Declaration of Covenants, Conditions and Restrictions for Montelena recorded on February 5, 2004, at Recording Number 2004-0123468, official records of Maricopa County, Arizona Recorder, ("Declaration").

The Association, by and through its members, hereby amends the Declaration as follows:

1. Section 4.3.1, Residential Architectural Control, is hereby amended to read in its entirety as follows:

Residential Architectural Control. All Residential Parcels in Montelena (including Residential Parcels owned by a Developer) are subject to architectural control as established by the Design Review Committee. Except as otherwise expressly provided in this Declaration, no Improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters any Residential Parcels within Montelena or the exterior appearance of Improvements located thereon, from its natural or improved state existing on the date a Tract Declaration for such property was first recorded shall be made or done without prior written approval of the Design Review Committee. The exterior of any building, fence, wall, residence or other structure shall not be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and any changes in the grade of Residential Parcels shall be subject to the prior written approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved in writing by the Design Review Committee, shall be made without prior written approval of the Design Review Committee. This Section does not apply to Improvements, alterations, repairs, excavation, grading, landscaping or other work performed by or on behalf of U.S. Development Land, L.L.C. or Nicholas Homes, Inc. The approval of the Design Review Committee required hereby shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the applicable Residential Parcel."

2. Section 11.9, Nonapplicability to Declarant, is hereby amended to read in its entirety as follows:

“Nonapplicability to Declarant. The provisions of this Article are not to apply to any Lots and Parcels owned by U.S. Development Land, L.L.C. or Nicholas Homes, Inc.”

The President of the Association hereby certifies that the above amendments have been adopted by the required percentage of the members, pursuant to the Declaration.

DATED this 15 day of December, 2010.

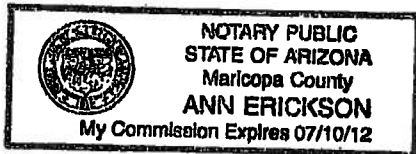
Montelena Master Community Association

By: [Signature]  
Anthony Del Corsano III

Its: President

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On this 15 day of December, 2010, before me personally appeared Anthony Del Corsano III, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed this document.



[Signature]  
Notary Public

Notary Seal:

When recorded, return to  
Robert J Traica, Esq  
Feola & Traica, P C  
2800 N Central, #1400  
Phoenix, AZ 85004

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OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20040123468 02/06/2004 14 29  
67844-53-1 1-  
ELECTRONIC RECORDING

FIRST AMERICAN TITLE  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
MONTELENA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
MONTELENA (hereinafter termed the "Declaration") is made effective as of the 6<sup>th</sup> day of  
FEBRUARY, 2004, by U S DEVELOPMENT LAND, LLC, an Arizona limited liability  
company (hereinafter sometimes termed "Declarant")

ARTICLE I

DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following  
meanings

1 1 Defined Terms

1 1 1 "Additional Property" shall mean real property located in the City in the  
general vicinity of Montelena For purposes of the foregoing, real property shall be deemed to be  
located adjacent to the Property if it is separated from the Property solely by land dedicated to and  
accepted by the United States of America, the State of Arizona, the County, the City, or any other  
political subdivision (e g , land dedicated for public rights-of-way)

1 1 2 "Annual Assessment" shall mean the charge levied and assessed each year  
against each Membership pursuant to Section 7 2 hereof

1 1 3 "Articles" shall mean the Articles of Incorporation of the Master Association  
as the same may from time to time be amended or supplemented

1 1 4 "Assessable Property" shall mean any Lot or Parcel, except (i) such part or  
parts thereof as may from time to time constitute Exempt Property, and (ii) any Parcel against  
which no Tract Declaration has been recorded

1 1 5 "Assessment" shall mean an Annual Assessment, Special Assessment and/or Maintenance Charge

1 1 6 "Assessment Lien" shall mean the lien created and imposed by Article 7

1 1 7 "Assessment Period" shall mean the period for which the Annual Assessment is to be levied which shall be a calendar year, however, the Board may from time to time in its sole discretion, change the Assessment Period

1 1 8 "Board" shall mean the Board of Directors of the Master Association

1 1 9 "Bylaws" shall mean the Bylaws of the Master Association as the same may from time to time be amended or supplemented

1 1 10 "City" for all purposes hereof shall be deemed to refer to the Town of Queen Creek, Arizona

1 1 11 "Common Expenses" shall mean the costs and expenses incurred, and the amounts established as replacement and maintenance reserves, by the Master Association to fulfill the Master Association's obligations under this Declaration and to provide for the uses and purposes specified in Article 9 or elsewhere in this Declaration

1 1 12 "Community Recreation Facilities", if any, shall mean the land, and improvements constructed thereon, comprising the Montelena community and recreational facilities, as identified on the Master Plan, and any additional land and improvements designated as part of the Community Recreation Facilities by the Declarant or the Master Association, and conveyed to the Master Association as such Community Recreation Facilities may include a swimming pool, a spa, bathroom facilities, shade ramadas, a turf area, picnic stations, basketball court, parking areas and/or such other recreational facilities as shall be determined by the Declarant or the Master Association from time to time The Community Recreation Facilities shall be available for the use and enjoyment of Owners of Lots and such other Persons as the Declarant or the Master Association may designate from time to time Nothing contained herein shall obligate Declarant or the Master Association to develop or construct any part of the Master Association Land as Community Recreation Facilities

1 1 13 "County" shall mean the County of Maricopa, Arizona

1 1 14 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein

1 1 15 "Declarant" shall mean and refer to the above recited Declarant or any person or persons to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned The Declarant's rights shall only be assigned by a written, recorded instrument expressly assigning those rights

1 1 16 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Montelena, as amended or supplemented from time to time

1 1 17 "Deed" shall mean a deed or other instrument conveying the fee simple title in a Lot or Parcel

1 1 18 "Design Guidelines" shall mean the Residential Design Review Guidelines, as the same may be amended from time to time

1 1 19 "Design Review Committee" shall mean the committee of the Master Association to be created pursuant to Section 1 1 1 hereof

1 1 20 "Developer" shall mean any Person who purchases one or more Lots from the Declarant for the purpose of constructing Dwelling Units thereon and then offering the Lots for sale to the general public

1 1 21 "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for independent ownership and for use and occupancy as a residence

1 1 22 "Exempt Property" shall mean the following parts of Montelena

1 1 22 1 All land and improvements owned by or dedicated to and accepted by the United States of America, the State of Arizona, the County, the City or any other political subdivision, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective, and

1 1 22 2 All Master Association Land, for as long as the Master Association is the owner thereof

1 1 23 "Improvement" shall include all buildings, structures, walls, landscaping and other improvements of any nature whatsoever

1 1 24 "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Section 4 1 hereof, which designates the type of improvements which may be constructed on a Lot or Parcel or Master Association Land and the purposes for which such improvements and surrounding land may be utilized

1 1 25 "Lessee" shall mean the lessee under a lease pertaining to any property within Montelena, including an assignee of a lease but excluding any Person who has assigned all of his interest in a lease

1 1 26 "Lot" shall mean (a) any area of real property within Montelena designated as a Lot on any Recorded subdivision plat and limited to Single Family Residential Use

1 1 27 "Maintenance Charges" shall mean any and all costs assessed pursuant to Article 10 hereof

1 1 28 "Master Association" shall mean the Montelena Master Community Association, an Arizona non-profit corporation, or its successors and assigns, which has been organized to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, the Articles and Bylaws

1 1 29 "Master Association Documents" shall mean this Declaration, the Articles, Bylaws, Montelena Rules, Residential Design Review Guidelines and any Tract Declarations, as any of the foregoing may be amended from time to time

1 1 30 "Master Association Land" shall mean such part or parts of Montelena (including without limitation the Community Recreation Facilities, if any, and any areas identified to be used for private trails and the like not otherwise owned by the City), together with the Improvements thereon, and other real property which the Master Association may at any time own in fee or in which the Master Association may at any time have a leasehold interest, for as long as the Master Association is the owner of the fee or leasehold interest

1 1 31 "Master Common Area" and "Master Common Areas" shall mean (a) all Master Association Land, and (b) all land within Montelena which the Declarant, by this Declaration, a Tract Declaration or other recorded instrument signed by Declarant, designates as "Master Common Area "

1 1 32 "Master Plan" shall mean the Montelena development plan, if any, approved by the City, or other applicable governmental agencies, as the same may be from time to time amended, a copy of which shall be on file at all times in the office of the Master Association. The identification of property and proposed uses of such property on the Master Plan shall not, under any circumstances, obligate the Declarant to subject such property to this Declaration or develop such property in the manner described. Omission of property from the Master Plan shall not prevent its later submission by the Declarant to the terms of this Declaration or its development as part of Montelena. Amendments to the Master Plan shall not require the amendment of this Declaration, nor notice to any Owner or Resident

1 1 33 "Member" shall mean any person holding a Membership in the Master Association pursuant to this Declaration

1 1 34 "Membership" shall mean a Membership in the Master Association and the rights granted to the Owners pursuant to Article 6 hereof to participate in the Master Association

1 1 35 "Non-Residential Parcels" shall mean those Lots and Parcels which are not Residential Parcels

1 1 36 "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot or Parcel, but excluding those who hold such title merely as security for the performance of an obligation. In the case of a Lot or Parcel, the fee simple title to

which is vested of record in a seller under a valid and outstanding agreement or contract of sale, as defined in A R S §33-741, legal title shall be deemed to be in the purchaser under such agreement or contract of sale. In the case of a Lot or Parcel, the fee simple title to which is vested of Record in a trustee pursuant to A R S §33-801, *et seq*, legal title shall be deemed to be in the trustor. An Owner shall include any Person who holds record title to a Lot or Parcel in joint ownership with any other Person or holds an undivided fee interest in any Lot or Parcel.

1 1 37 "Parcel" shall mean all contiguous areas of real property within Montelena, other than Lots, which is owned by the same Person.

1 1 38 "Party Fence" and "Party Wall" shall mean a fence or wall constructed on, or immediately adjacent to (i) the common boundary of Lots, or (ii) the common boundary of Master Common Areas and a Lot or Parcel.

1 1 39 "Person" means an individual, firm, corporation, partnership, association, estate, trust, pension or profit sharing plan, or any other entity.

1 1 40 "Property" or "Montelena" shall mean the property situated in the City, as described on Exhibit "A" to this Declaration, and such additions thereto, if any, as may hereafter become subject to this Declaration and be brought within the jurisdiction of the Master Association pursuant to the provisions of Article 13 of this Declaration.

1 1 41 "Recording" or "Recordation" shall mean placing an instrument of public record in the office of the County Recorder of the County, and "Recorded" shall mean having been so placed of public record.

1 1 42 "Resident" shall mean

1 1 42 1 Each Lessee actually residing on any part of the Assessable Property, and

1 1 42 2 Members of the immediate family of each Owner and Lessee actually living in the same household with such Owner or Lessee.

Subject to such rules and regulations as the Master Association may hereafter specify (including the imposition of special non-resident fees for use of the Master Association Land if the Master Association shall so direct), the term "Resident" also shall include guests or invitees of any such Owner or Lessee, if and to the extent the Board in its absolute discretion by resolution so directs.

1 1 43 "Residential Design Review Guidelines" shall mean those guidelines and standards established by the Declarant pursuant to Section 11 1 hereof as same may be amended from time to time by the Design Review Committee.

1 1 44 "Residential Parcels" shall mean those Lots and Parcels the Land Use Classification of which is Single Family Residential Use.

1 1 45 "Satellite Association" shall mean any homeowners or similar association formed by a Developer (other than Declarant) of a Parcel as referenced in Section 5 5 of this Declaration

1 1 46 "Special Assessment" shall mean any Assessment levied and assessed pursuant to Section 7 6 hereof

1 1 47 "Tract Declaration" shall mean a declaration recorded pursuant to Section 4 1 of this Declaration

1 1 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on the same plane as the object being viewed at a distance of one hundred (100) feet or less from the nearest boundary of the property being viewed, or otherwise visible so as to materially impair (as determined by the Design Review Committee) the available view of surrounding areas by Residents of adjacent Dwelling Units

## ARTICLE 2

### PROPERTY SUBJECT TO DECLARATION

2 1 General Declaration Creating Montelena Declarant intends to develop Montelena by subdivision into various Parcels and Lots and to sell and convey such Parcels and Lots As portions of Montelena are developed, Declarant intends to record one or more Tract Declarations covering Lots or Parcels, which Tract Declarations, among other things, may designate Master Common Areas and shall incorporate this Declaration by reference The Tract Declarations may establish such additional covenants, conditions, and restrictions as may be appropriate, for the Lots or Parcels covered by the applicable Tract Declaration Declarant hereby declares that all of the real property within Montelena is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any recorded Tract Declarations applicable thereto, as amended or modified from time to time, provided, however, that such portions of the Property as are dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration and the Covenants herein contained while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners, Lessees or Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners, Lessees and Residents This Declaration and the Tract Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of Montelena, and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of Montelena and every part thereof All of this Declaration shall run with all Parcels and Lots for all purposes and shall be binding upon and inure to the benefit of Declarant, the Master Association, all Owners, Lessees and Residents and their successors in interest Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Master Plan or any portions thereof



2 2 Master Association Bound The Covenants shall be binding upon and shall benefit the Master Association

2 3 Satellite Associations Bound Any and all Satellite Associations shall be bound by and, to the extent specifically set forth in this Declaration or the applicable Tract Declaration, benefited by the Covenants

### ARTICLE 3

#### EASEMENTS AND ACKNOWLEDGEMENT OF USE OF SURROUNDING PROPERTY

3 1 Easements of Enjoyment in Master Common Areas Declarant and every Owner, Lessee and Resident shall, except as otherwise provided in Section 3 2 below, have a right and easement of enjoyment in and to the Master Common Areas which shall be appurtenant to, and shall pass with, the title to every Parcel and Lot, subject to the following provisions

3 1 1 The right of the Master Association to suspend the voting rights and right to use of the Community Recreation Facilities, if any, and other Master Common Areas (other than the right of an Owner and such Owner's family, Lessees and guests to use any streets which are part of the Master Common Area for ingress or egress to the Owner's Lot) by any Member (i) for any period during which any Assessment or any other fee or charge payable hereunder against his Parcel or Lot remains delinquent, (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Tract Declaration or the Montelena Rules, and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period

3 1 2 The right of the Master Association to adopt and enforce rules, regulations and/or policies regulating the use of the Master Common Areas, including rules, regulations and policies limiting the number of guests who may use the Master Common Area and restricting or prohibiting access to those Master Common Areas, such as specified landscaped areas, not intended for use by Owners, Lessees or Residents. The Montelena Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Master Common Areas for the safety and convenience of the users thereof, and otherwise shall serve to promote the best interests of the Owners, Lessees and Residents

3 1 3 The right of the Master Association to dedicate, convey, transfer, lease or encumber all or any part of the Master Common Areas, provided, however, that if access to a Lot is over any part of the Master Common Area, any conveyance, lease or encumbrance of such Master Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees

3 1 4 The right of the Master Association to change the use of the Master Common Areas in accordance with this Declaration as may be allowed by City plans, ordinances, and codes, and the right of the Master Association to add or delete improvements and other amenities to or from the Community Recreation Facilities

3 1 5 The right of the Master Association to change the size, shape or location of Master Common Areas, to exchange Master Common Areas for other lands or interests therein which become Master Common Areas and to abandon or otherwise transfer Master Common Areas, as may be allowed by City plans, ordinances, and codes, so long as, in each case, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) if Declarant no longer possesses a Class B Membership, the President of the Master Association, after obtaining the affirmative vote or written consent of two-thirds (2/3) of the total of all Class A and Class B Members, agreeing to such change in size, shape or location, exchange, abandonment or transfer, as may be allowed by City plans, ordinances, and codes

3 1 6 The right of the Master Association to rent or lease any portion of the Master Common Area or any recreational facility or amenity situated on the Master Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees

3 1 7 The right of the Board to charge reasonable admission or other use, consumption or membership fees for the use of any recreational facility or amenity situated on the Master Common Area

3 1 8 The right of the Board to permit the use of the Community Recreation Facilities, if any, or any other amenity situated on the Master Common Area by Persons other than Owners or Residents and their guests upon payment of such use, consumption or membership fees as may be established by the Board

3 1 9 The rights and easements, if any, reserved by or granted to the Declarant, a Developer or any other Person in the deed conveying the Master Common Area to the Master Association or any Satellite Association

3 2 Easement of Enjoyment in Community Recreation Facilities Each Owner of a Lot or Parcel the use of which is restricted to Single Family Residential Use shall have a right and non-exclusive easement to use and enjoy the Community Recreation Facilities, if any, subject to the Board's ability to charge use or consumption fees for such use and to adopt and enforce reasonable rules and regulations governing such use. Other Owners of Non-Residential Parcels, and their Lessees and employees, shall not have any right or easement to use and enjoy the Community Recreation Facilities that is derived from ownership of property within Montelena. However, in its discretion, the Board may permit such use conditioned upon the payment of such use, consumption or membership fees as it deems reasonable and appropriate

3 3 Declaration of Use Any Member may, in accordance with this Declaration and the Montelena Rules and the limitations therein contained, delegate his or her right of enjoyment in the Master Common Areas to the members of his or her family, Lessees or Residents subject to any rules and regulations governing use by guests, including limitations on the number of guests permitted, or applicable guest fees, as the Board may adopt

**3 4 Utility and Development Easements** Declarant hereby reserves for itself, so long as Declarant owns any Lot or Parcel in Montelena, and grants to the Master Association and all public utility providers providing service within Montelena, a non-exclusive, perpetual blanket easement over and through all of Montelena (excluding any structure situated thereon), to the extent reasonably necessary for purposes of (i) installing or constructing in accordance with plans and specifications approved by Declarant, the City or the County any infrastructure improvements and any equipment used to provide any utilities to any portion of Montelena, or adjacent land, including, without limitation, water, sewer, drainage, gas, electricity, telephone, television service and communication lines and systems, whether public or private, (ii) ingress and egress to install, construct, operate, maintain, repair, replace and inspect such infrastructure improvements and utility equipment in accordance with plans and specifications approved by Declarant, the City or the County, and (iii) storm water management and storm water drainage, as necessary or desirable for the orderly development of Montelena in accordance with plans and specifications approved by Declarant, the City or the County Subject to the provisions of this Section, Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the reasonable discretion of the Declarant, in connection with the orderly development of Montelena The Owner of any property to be burdened by any easement granted pursuant to the foregoing shall be given written notice in advance of the grant The location of the easement shall be subject to the prior written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, conditioned or delayed Any pipes, conduits, lines, wires, transformers, equipment and any other apparatus necessary for the provision or metering of any utility may be installed or relocated pursuant to this Section 3 4 only where permitted by the Declarant, where contemplated on any site plan approved by the Declarant, where approved by resolution of the Board or where depicted or contemplated by any improvement plans approved by the City for any portion of Montelena Notwithstanding the foregoing, following recordation of a subdivision plat or map of dedication with respect to any portion of Montelena, any pipes, conduits, lines, wires, transformers, equipment and any other apparatus necessary for the provision or metering of any utility that is to be installed or relocated within such portion of Montelena pursuant to this Section 3 4 may be installed or relocated only within such public roads and public utility easements as may be identified on the applicable subdivision plat or map of dedication Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant

**3 4 1** All work associated with the exercise of the easements described in this Section 3 4 shall be performed as promptly and expeditiously as possible, and in such a manner as to minimize interference with the use and enjoyment of any Lot or Parcel burdened by the easement and, except in an emergency, entry onto any Lot or Parcel shall be made only after reasonable notice to the Owner or occupant of the Lot or Parcel All Owners shall cooperate to allow Declarant and any Person designated by Declarant to install, extend and connect to any utility improvements installed pursuant to the foregoing Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots and Parcels Upon completion of the work, the Person providing a service or installing a utility pursuant to this easement shall restore the surface of the property and the surrounding vegetation and Improvements, to the extent reasonably possible, to their condition prior to the commencement of the work as soon as possible

3 4 2 Any Person exercising any rights under this Section 3 4 shall indemnify, defend and hold harmless Declarant and the Owner of the property affected by the exercise of the easement for, from and against any and all claims, actions, demands, liabilities, damages, costs and expenses (including without limitation, reasonable attorneys' fees, any mechanic's or matenalmen's liens or claims of liens) which may be suffered, incurred, claimed or asserted against Declarant or the Owner of the affected property in connection with, arising out of, or in any way related to the exercise of the easement rights granted pursuant to this Section 3 4

3 5 Conveyance, Lease or Encumbrance of Master Common Area Except as provided in this Section or in Section 3 4, the Master Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior-written consent of the Declarant and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Master Association Notwithstanding the foregoing, the Master Association shall have the authority to dedicate parts of the Master Common Area to any public agency, authority or utility for such purposes and subject to such conditions as the Board may determine to be in the best interests of the Master Association The Master Association may grant permits, licenses and easements on, over, under and through the Master Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property and which do not have any substantial adverse effect on the enjoyment of the Master Common Areas by the Members The Master Association may lease all or any part of the Master Common Area for such purposes and on such terms and conditions as are approved by Members entitled to cast more than fifty percent (50%) of the votes represented in person or by proxy at an annual or special meeting of the Members at which the lease is submitted to the Members for approval Further, the Master Association may convey portions of the Master Common Area for the purpose of adjusting the boundary lines between the Master Common Area and adjoining Lots or dedicated rights-of-way

3 6 Other Third Parties The Master Common Area is private property and, in general, is not available for use by Persons other than Owners, Residents and Lessees However, in the Board's discretion, and pursuant to such rules and regulations as the Board may adopt, the Master Association may provide services to or permit Master Common Area facilities use by other third parties, including the general public The Master Association may, but is not required to, charge and collect use and consumption fees from third parties, as provided for in Section 3 1 7 Such services and fees may vary among such parties The Master Association also may enter into agreements with third parties to provide such facilities and services in exchange for financial or other consideration

3 7 Declarant's Reserved Rights The Declarant hereby reserves for itself, its affiliates, sales agents, employees and other designees (including without limitation, prospective Lot or Parcel purchasers), a right and non-exclusive easement of access to and the use and enjoyment of the Master Common Area and the Community Recreation Facilities, if any, for sales and marketing, recreational use and other purposes generally permitted for other users Such use shall be subject to the operational rules and regulations pertaining to all other users but shall not be subject to the payment of any use, consumption or membership fees

3 8 Easements for Drainage There is hereby created a perpetual, non-exclusive blanket easement upon, across, over and under each Lot and Parcel for ingress to, egress from and the installation, replacing, repairing, maintaining and inspecting of all drainage improvements and related appurtenances required to be installed pursuant to the City approved master drainage plan for Montelena, or any part thereof, or as reflected on any improvement plans for any portion of Montelena approved by the City. All work associated with the exercise of any easement described in this Section 3 8 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property affected by the exercise of the easement. Upon completion of the work, the Person exercising the easement shall restore the surface of the property and the surrounding vegetation and Improvements, to the extent reasonably possible, to their condition prior to the commencement of the work as soon as possible. The exercise of any such easement shall not extend to permitting entry into the structures on any Lot or Parcel, nor shall it unreasonably interfere with the use of any Lot or Parcel, and, except in an emergency, entry onto any Lot or Parcel shall be made only after reasonable notice to the Owner or occupant of the Lot or Parcel. No Dwelling Unit or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the City approved master drainage plan for Montelena, or any part thereof, or for any Lot or Parcel as shown on any applicable drainage plans on file with the City.

3 9 Proposed Desert Mountain Park In accordance with Ordinance 244-03 adopted by the Town of Queen Creek and the Zoning Conditions contained therein, notice is hereby given that certain areas of Montelena may be subject to noise and light pollution as a result of the proposed "Desert Mountain Park". In addition, the possibility exists that balls leaving the playing fields may have an impact on Lots along the northern boundary of Montelena.

3 10 Williams Gateway Airport In accordance with Ordinance 244-03 adopted by the Town of Queen Creek and the Zoning Conditions contained therein, each Owner, by acquiring a Lot or Parcel, hereby acknowledges that it has notice that Montelena is located near Williams Gateway Airport. Due to its proximity to Williams Gateway Airport, Montelena is likely to experience aircraft overflights, which could generate noise levels that may be of concern to some individuals. The mix of aircraft consists of cargo, commercial, charter, corporate, general aviation and military aircraft.

3 11 Agricultural and Crop-Dusting Activities In accordance with Ordinance 244-03 adopted by the Town of Queen Creek and the Zoning Conditions contained therein, each Owner hereby acknowledges that Montelena is near crop dusting operations. General agricultural operations also exist in the area and Montelena may be subject to noise, dust and possibly odors normally associated with agricultural operations. Additionally, Montelena is located in an area where there are aircraft operations associated with agriculture.

#### ARTICLE 4

#### LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

4 1 Land Use Classifications As portions of Montelena are prepared for development, the Land Use Classifications, restrictions, easements, rights-of-way, and other matters, including

new or different uses and restrictions thereon and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration which shall be recorded for that portion of Montelena. Any such Tract Declaration shall expressly set forth restrictions on the use of the Parcel(s) subject to the Tract Declaration. Any such Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. The initially contemplated Land Use Classifications include, but are not limited to, the following Land Use Classifications

4.1.1 Single Family Residential Use, and

4.1.2 Master Association Use, which may include Master Common Areas

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such classifications, shall be determined in the Tract Declaration.

4.2 Declarant's Right to Change Land Use Classifications Unless the applicable Tract Declaration provides to the contrary, for so long as the Class B Membership exists Declarant (if Declarant is the Owner of said Lot or Parcel) or Declarant and the Owner(s) of said Lot or Parcel (if Declarant is not the Owner or the sole Owner of said Lot or Parcel), without the approval of the Board or any other Owner, shall have the right to change the Land Use Classification of a Lot or Parcel as established in a Recorded Tract Declaration by Recordation of an amendment to the applicable Tract Declaration executed by Declarant and, if applicable, the Owner(s) of said Lot or Parcel.

4.3 Covenants, Conditions, Restrictions and Easements Applicable to Parcels Within All Land Use Classifications The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Parcels and Lots, and the Owners, Residents, Tenants and Lessees thereof, regardless of Land Use Classifications

4.3.1 Residential Architectural Control All Residential Parcels at Montelena are subject to architectural control as established by the Design Review Committee, provided, that so long as Declarant owns any portion of Montelena, Developers shall be subject to architectural control as established by Declarant. Following the conveyance of a Lot by a Developer to a member of the home-buying public, the Owner of such Lot thereafter shall be subject to the jurisdiction of the Design Review Committee. Except as otherwise expressly provided in this Declaration, no Improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters any Residential Parcels within Montelena or the exterior appearance of Improvements located thereon, from its natural or improved state existing on the date a Tract Declaration for such property was first recorded shall be made or done without prior written approval of the Design Review Committee or Declarant, as applicable. The exterior of any building, fence, wall, residence or other structure shall not be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Design Review Committee or Declarant, as applicable. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and any changes in the grade of

Residential Parcels shall be subject to the prior written approval of the Design Review Committee or Declarant, as applicable. No changes or deviations in or from the plans and specifications once approved in writing by the Design Review Committee or Declarant, as applicable, shall be made without prior written approval of the Design Review Committee or Declarant, as applicable. This Section does not apply to Improvements, alterations, repairs, excavation, grading, landscaping or other work performed by or on behalf of Declarant. The approval of the Design Review Committee or Declarant required hereby shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the applicable Residential Parcel.

4 3 2 Non-Residential Architectural Control As presently configured, Montelena does not contain any Non-Residential Parcels. In the event that the Land Use Classification of any portion of Montelena shall be changed in the future to include Non-Residential Parcels, then the Declarant shall have the right to establish architectural controls pertaining to the development of, and all Improvements to be made or placed on, any Non-Residential Parcel.

4 3 3 Restriction on Further Subdivision, Property Restrictions and Rezoning No Lot or Parcel subject to a recorded Tract Declaration shall be further subdivided or separated into smaller Lots or Parcels by any Owner, and no portion less than all of any such Lot or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board and Declarant (so long as Declarant is the Owner of any Lot or Parcel), which approval must be evidenced on the recorded plat or other recorded instrument creating the subdivision, easement or other interest. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee or other person against any Lot or Parcel without the provisions thereof having been first approved in writing by the Board, and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. Except as set forth in Section 4 2 above, any rezoning or change of use of Lots or Parcels covered by a Tract Declaration must first be approved in writing by the Board. For so long as Declarant owns any Lot or Parcel in Montelena, this Subsection 4 3 3 shall not be applicable to or binding upon Declarant with respect to any such Lot or Parcel.

4 3 4 Health, Safety and Welfare If additional uses, activities and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees or Residents, Declarant, so long as Declarant owns any portion of Montelena, or the Board may make rules restricting or regulating their presence on Montelena as part of the Montelena Rules, or may direct the Design Review Committee to make rules governing their presence on Lots or Parcels as part of the Design Guidelines.

4 3 5 Model Homes The provisions of this Declaration and of Tract Declarations which prohibit non-residential use of Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by Developers and parking incidental to the visiting of such model homes so long as the location of such model homes are approved by Declarant and the Design Review Committee, as applicable, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Design Review Committee may also permit other areas to be used for parking in connection with the showing of model homes provided such parking and parking areas are in compliance with the

ordinances of the governing municipality, other applicable governmental agencies and any rules of the Design Review Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively engaged in the construction and sale of Dwelling Units at Montelena, and no home shall be used as a model home for the sale of homes not located in Montelena.

**4 3 6 Residential Parcels Permitted Uses** Except for construction, maintenance and other activities related to the model homes as provided in Section 4 3 5 above, the Lots within Residential Parcels shall be used, improved and devoted exclusively to residential use and no trade or business may be conducted on any Lot or in or from any improvement on any Lot, except that an Owner or other Resident of a Lot may conduct a legal business activity within a Dwelling Unit (but not including any garage area) on a Lot so long as (a) the existence of the operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit on the Lot, (b) the business activity conforms to all applicable zoning ordinances or requirements of the City, (c) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood, (d) the business activity does not involve the door-to-door solicitation of Owners or other Residents in Montelena, and (e) the business activity is consistent with the residential character of Montelena and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Residents in Montelena, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required for such activity. The leasing of a Lot by the Owner thereof shall not be considered a trade or business within the meaning of this Section, provided, however, no lease shall be of less than the entire Lot and all Improvements thereon.

**4 3 7 [RESERVED]**

**4 3 8 Incidental Uses** The Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of Montelena as a whole.

**4 3 9 Maintenance of Lawns and Plantings** Within one hundred twenty (120) days of acquiring a Lot, each Owner (other than Declarant or a Developer) shall landscape, if not already landscaped, such Lot and any public right-of-way areas between sidewalks or bike paths and the adjacent Street curb along the front or side boundaries of such Lot, except where the installation or maintenance (or both) of landscaping within any public right-of-way area is designated on a plat Recorded by or with the written approval of Declarant as being the responsibility of the Master Association or Satellite Association. Each Owner of a Lot or Parcel shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (1) his or her Lot or



Parcel (including set back areas), (ii) planted public right-of-way areas between sidewalks (or bike paths) and the Street curb in front of his or her property, if any, (iii) any other public right-of-way or easement area which abuts the Owner's Lot or Parcel and which is located between the boundary line of his Lot or Parcel and the paved area of any street, sidewalk, bike path or similar area and (iv) any non-street public right-of-way, neatly trimmed and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material, provided, however, that such Owner shall not be responsible for maintenance of any area (1) which is Master Common Area, or (2) over which the City, the County, or other public agency assumes responsibility, for so long as said political subdivision or other public agency assumes or has responsibility as provided in (2) above. Notwithstanding the foregoing, the Design Review Committee having jurisdiction, or Declarant, may require the Owner of any Lot or Parcel adjacent to the areas described in items (ii), (iii) and (iv) above to install and maintain landscaping in such areas on such terms and conditions established by the Design Review Committee or Declarant as the case may be. The Board may impose such conditions as may be determined to be reasonably necessary (including, without limitation, the requirement that certain Improvements be constructed or installed within certain time periods or that any landscaping be installed and maintained by the Owner for a sufficient grow-in period) prior to accepting any portion of a Lot or Parcel intended to be dedicated for use as Master Common Area or prior to accepting any maintenance responsibility.

**4 3 10 Nuisances, Construction Activities** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel and no odors shall be permitted to arise or emit therefrom so as to render any such Lot or Parcel or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot or Parcel, provided, however, that the foregoing shall not be construed to prohibit the installation of a reasonable number of exterior speakers in the backyard of a Lot so long as the volume level of sound emitted therefrom does not create a nuisance to any other property in the vicinity thereof or to the occupants of such other property, as determined by the Board in its sole discretion. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but the Board may adopt rules limiting the hours and/or days construction may take place and Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee or Declarant, as applicable. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of Improvements may be kept only in areas approved by the Design Review Committee or Declarant. Either the Design Review Committee or Declarant, as applicable, may also require screening of said storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

**4 3 11 Repair of Buildings** No building or structure on any Lot or Parcel shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in

good condition and repair and adequately painted or otherwise finished. If any building or structure is damaged or destroyed, then, subject to the approvals required by either Sections 4 3 1 or 4 3 2 above (as applicable), such building or structure shall be immediately repaired or rebuilt or shall be demolished.

**4 3 12 Signs** No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel or any portion of the Master Common Area except such signs which have been approved in advance and in writing by Declarant or the Design Review Committee, and which are in conformance with the applicable requirements of the City, the County or other applicable governmental agencies. Nothing herein shall be deemed to prohibit

**4 3 12 1** the attachment to the exterior of a Dwelling Unit of a single nameplate and a single address plate identifying the occupant and the address of such Dwelling Unit, provided that such nameplate and address plate shall be subject to the rules and regulations of the Design Review Committee,

**4 3 12 2** the placing upon the exterior of any Dwelling Unit (or upon the Lot containing the Dwelling Unit) of a single "For Sale" sign, providing that such "For Sale" sign shall not exceed eighteen inches (18") by twenty-four inches (24") in size,

**4 3 12 3** the placement upon the Lot of a single "security" sign, provided that such "security" sign shall not have dimensions exceeding eight inches (8") by ten inches (10"),

**4 3 12 4** the placement of no more than one (1) political sign on any Lot or Parcel that are erected not more than thirty (30) days prior to an election (which political signs must be removed no later than five (5) days following the election), or

**4 3 12 5** directional signs, subdivision identification signs, street signs or similar signs as may be approved by the Design Review Committee for installation or maintenance by the Master Association or Satellite Association

**4 3 13 Utility Service** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signs, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved by Declarant, so long as Declarant owns any portion of Montelena, or the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by Declarant, so long as Declarant owns any portion of Montelena, or the Design Review Committee.

**4 3 14 Right of Entry** During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Parcel, Declarant, any member of the Design Review

Committee, any member of the Board, or any of their authorized representatives, shall have the right to enter upon and inspect any Lot or Parcel, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such entry

**4 3 15 Animals** No animal, bird, fowl, poultry, reptile or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot or Parcel and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry, reptile or livestock shall be allowed to make any unreasonable amount of noise or to become a nuisance. No animal that has a propensity to attack other Persons or animals, without provocation, or otherwise endanger the safety of Persons and other animals in Montelena, or that has otherwise been determined to be vicious, shall be permitted or maintained on any Lot or Parcel. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, reptile or livestock shall be maintained so as to be unsightly or Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this Section, a particular animal, bird, fowl, poultry, reptile or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance or is vicious, or whether the number of animals, birds, fowl, poultry, reptile or livestock on any such property is reasonable, or whether any structure for the care, housing, or confinement of any animal, bird, fowl, poultry, reptile or livestock is unsightly. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. The Board may include in the Montelena Rules a limit on the number of pets that may be kept on any Lot or Parcel

**4 3 16 Temporary Occupancy and Temporary Buildings** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a Dwelling Unit, either temporary or permanent. Temporary buildings or structures used during the construction of a Dwelling Unit or other structure on any property shall be removed immediately after the completion of construction

**4 3 17 Diseases and Insects** No Owner shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects

**4 3 18 Antennas** To the extent permitted by applicable law, the installation of any antenna, aerial, satellite dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be subject to the prior written approval of Declarant or the Design Review Committee, as applicable. Therefore, no antenna, satellite or microwave dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be constructed, installed, erected, used or maintained on any Lot or Parcel without the prior written approval of Declarant or the Design Review Committee, as applicable, unless applicable law prohibits Declarant or the Design Review Committee from requiring such approval. Even if applicable law prohibits Declarant or the Design Review Committee from requiring prior approval for the installation of certain antennas, any such antennas still must be installed in accordance with the Design Guidelines

4 3 19 Mineral Exploration No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and excavation work and the removal of fill material including, but without limitation, gravel, rock and sand, in connection with the construction of Dwelling Units, buildings, structures or other improvements which have been approved in writing by Declarant or the Design Review Committee, as applicable, except for grading, excavation and removal work being performed by, or on behalf of, Declarant

4 3 20 Trash Containers and Collection No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved in writing by Declarant or the Design Review Committee, as applicable. In no event shall such containers be maintained so as to be unsightly or Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection. All rubbish, trash, or garbage shall be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

4 3 21 Clothes Drying Facilities No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or Parcel so as to be Visible From Neighboring Property.

4 3 22 Machinery and Equipment No machinery or equipment of any kind shall be placed, operated or maintained upon, or adjacent to, any Lot or Parcel except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements, (ii) that which Declarant or the Master Association may require for the operation and maintenance of Montelena, or (iii) that used in connection with any business permitted under a Tract Declaration.

4 3 23 Maintenance of Party Walls Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls between Lots and Parcels or Party Fences between Lots and Parcels shall be as follows:

4 3 23 1 *The Owners of contiguous Lots or Parcels who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of same by the other Owner.*

4 3 23 2 *If any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any of his Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable and including, without limitation, any damage or destruction caused by or related to construction and use of a planter along any Party Wall or Party Fence), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection 4 3 23 5 below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.*

4 3 23 3 If any Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall or Party Fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots or Parcels on the Party Wall or Party Fence

4 3 23 4 Notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall or Party Fence or impairment of the structural integrity of any Party Wall or Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee

4 3 23 5 If a dispute occurs between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding

4 3 23 6 Anything in the foregoing to the contrary notwithstanding

(i) In the case of Party Fences or Party Walls (a) between Master Common Areas and Lots or Parcels, or (b) constructed by Declarant or the Master Association on Master Common Areas, the Master Association, only following its approval of the construction of such Party Fence and acceptance of the maintenance thereof, shall be responsible for all maintenance thereof, subject to the provisions of Sections 10 2 and 10 4, except that each Owner of a Lot or Parcel shall be responsible for painting the portion of the Party Fence or Party Wall facing his Lot or Parcel or the portion thereof which is not a portion of the Master Common Area, and each Owner shall be responsible for any repairs, replacements and maintenance resulting from the improper or defective construction of such Party Fence or Party Wall constructed by the Owner

(ii) The provisions of this Section 4 3 23 6 shall not apply to any Party Wall which separates the interiors of two (2) Dwelling Units and the rights of the Owners of such Dwelling Units with respect to Party Walls shall be governed by plats and any covenants, conditions and restrictions to be recorded by the Developer of the Dwelling Units on the real property on which the Dwelling Units are located

(iii) If any portion of a Party Wall or Party Fence, the length of which is situated in its entirety either on, immediately adjacent to or over the common boundary of Lots or Parcels, or on the common boundary of Master Common Areas and Lots or Parcels, encroaches onto a Lot or Parcel, or encroaches onto any Master Common Area, then (1) the owner of the property onto which the Party Wall or Party Fence encroaches (the "Burdened Property") shall be deemed to have granted an easement of access and enjoyment to the owner of the adjacent Lot or Parcel (the "Benefited Property") over that portion of the Burdened Property lying on the same side of the Party Fence or Party Wall as the Benefited Property (the "Easement Area"), and (2) the owner of the Benefited Property shall be responsible for maintenance of the Easement Area in

accordance with all maintenance standards applicable to the adjacent portion of the Benefited Property

**4 3 24 Maintenance of Walls other than Party Walls**

**4 3 24 1** Unless otherwise provided in a Tract Declaration, walls (other than Party Walls or Party Fences governed by Section 4 3 23 or walls covered by Subsections 4 3 24 2 and 4 3 24 3 of this Declaration) located on a Lot or Parcel shall be maintained, repaired and replaced by the Owner of the Lot or Parcel

**4 3 24 2** Any wall which consists of masonry columns and/or masonry base and wrought iron fencing which separates a Lot or Parcel and Master Common Area shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Master Association shall be responsible for the painting, repair, maintenance and replacement of (i) the top of the masonry wall or columns, (ii) the side(s) of the masonry wall or columns which are visible from the Master Common Area, and (iii) all portions of any wrought iron fencing. The Owner of the Lot or Parcel shall be responsible for reimbursing the Master Association for one-half (1/2) of the cost incurred by the Master Association in painting, repairing and/or replacing any such wrought iron fencing. Any reimbursement due to the Master Association from an Owner pursuant to this Subsection shall be paid by the Owner to the Master Association within fifteen (15) days after receipt of a bill, invoice or other demand from the Master Association for such reimbursement amount, shall be deemed to be a Maintenance Charge and shall be secured by the Assessment Lien

**4 3 24 3** If the Master Association deems it necessary to trim, cut or remove vines, plants, trees, bushes, shrubs or other landscaping planted on a Lot or Parcel in order for the Master Association to be able to perform its maintenance responsibilities under this Section, the Master Association shall give notice to the Owner of the applicable Lot or Parcel identifying the work which must be done in order for the Master Association to be able to perform its maintenance responsibilities and the date by which such work must be completed. If the Owner does not perform the work identified in the notice within the time period set forth in the notice, then the Master Association shall have the right to perform the necessary work and charge the Owner for all costs incurred by the Master Association in the performance of the work. Any such amounts which become payable by an Owner to the Master Association pursuant to this Subsection shall be payable by the Owner within fifteen (15) days after receipt of a billing, invoice or other demand from the Master Association for payment of such amount, shall be deemed to be a Maintenance Charge and shall be secured by the Assessment Lien. The Master Association shall not be liable to the Owner of a Lot or Parcel or to any other Person for any loss or damage to the landscaping or for any change in appearance of a Lot or Parcel as a result of any work performed by the Master Association on a Lot or Parcel pursuant to this Subsection. The Master Association shall be liable to the Owner of a Lot or Parcel for any damage to a wall caused by the Master Association in the exercise of the Master Association's rights under this Subsection 4 3 24

**4 3 24 4** Any wall which is placed on the boundary line between a Lot or Parcel and public right-of-way shall be maintained, repaired and replaced by the Master Association except that the Owner of the Lot or Parcel shall be responsible for the repair and replacement of the surface of the wall which faces the Lot or Parcel

4 3 25 Overhead Encroachments No tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of Declarant or the Design Review Committee, as applicable

4 3 26 Trucks, Trailers, Campers and Boats No vehicle may be left upon any portion of Montelena except in a garage, driveway, parking pad, or other area designated by the Board Notwithstanding the foregoing, commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, stored vehicles, and unlicensed vehicles or inoperable vehicles shall not be parked within Montelena other than within an enclosed garage This Section shall not apply to emergency vehicle repairs The term "vehicles" as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans and recreational vehicles

4 3 27 Motor Vehicles No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in Montelena, and no inoperable vehicle (including, without limitation, vehicles with flat tires) may be stored or parked on any such Lot, Parcel or street, so as to be Visible From Neighboring Property or to be visible from Master Common Areas or streets, provided, however, that the provisions of this Subsection shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved in writing by Declarant, so long as Declarant owns any portion of Montelena, or the Design Review Committee

4 3 28 Parking Vehicles of all Owners, Lessees and Residents, and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, designated spaces in commercial areas, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot or Parcel, provided, however, this Subsection shall not be construed to permit the parking in the above described areas of any vehicle whose parking at Montelena is otherwise prohibited or the parking of any inoperable vehicle, provided, further, the Board may promulgate rules and regulations limiting or restricting parking of vehicles during designated hours and on designated streets

4 3 29 Towing of Vehicles The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment Any expense incurred by the Board or the Master Association in connection with the towing of any vehicle or equipment shall be paid to the Board or the Master Association upon demand by the owner of the vehicle or equipment If the vehicle or equipment is owned by an Owner, any amounts payable pursuant to this Section shall be secured by an Assessment Lien, and the Master Association may enforce collection of suit amounts in the same manner provided in this Declaration for the collection of Assessments

4 3 30 Floodlights To preserve the special nature of Montelena, no Dwelling Unit may be floodlighted. All security, landscaping, and safety lighting shall be low wattage, incandescent and indirect. No fixtures shall be permitted which shine toward the street or adjacent properties, nor shall any obvious or harsh light source be allowed to create "hot spots" within Montelena.

4 3 31 Rooftop Equipment The Design Guidelines may restrict or prohibit the installation of rooftop equipment and may require that all such equipment be fully screened such that it is not Visible From Neighboring Property. The Design Guidelines may require such screening to take into account not only views from the adjacent street and property, but also from more distinct locations which occur at a higher elevation within Montelena.

4 3 32 Basketball Poles and Backboards No basketball pole and/or backboard or similar sport equipment that will be located in a front yard of a Lot or visible from adjacent streets may be installed without the prior written consent of the Design Review Committee, which consent may be withheld in the sole and absolute discretion of such committee.

4 3 33 Soil Condition and Drainage In no event is Declarant responsible to any Owner for the condition of the soils or subsurface condition, soils preparation, drainage, construction of the building pad (collectively, the "Soils Condition"), or any affect such matters have on any Dwelling Unit or other Improvements constructed on any Lot or Parcel, including, without limitation, any landscaping on any part of a Lot or Parcel. Each Owner hereby acknowledges that Declarant is making no representation or warranty regarding such matters. Each Developer or other builder of Improvements within Montelena is responsible for constructing all Improvements in accordance with soils and geotechnical reports and studies and ensuring that the Improvements do not impede the drainage on the Lot or Parcel as contemplated by the drainage plans approved by the City. Each Developer or other builder of Improvements shall defend, indemnify and hold Declarant harmless from, of, for and against any claims, damages, obligations, liabilities, losses, expenses or fees (including attorneys' fees) arising from any Soils Condition on the Lots and Parcels owned or developed by the Developer or other builder or the failure of a Developer or other builder to properly construct any Improvements, including without limitation any appurtenant structures, driveways, landscaping or otherwise on such Lots and Parcels. Each Owner hereby acknowledges that proper drainage is necessary for the maintenance of the Lots and Parcels and accordingly agrees that such Owner shall not install any sprinklers or water system, construct ponds, wells, retention basins, make or remove improvements to any Improvements or otherwise alter the surface of the Lot or Parcel so as to improperly impede or impair the drainage of the Lot or Parcel. In addition, each Owner hereby agrees that all discharges of water (for example, without limitation, discharges of swimming pool backwash) shall remain on the Lot or Parcel and shall not be permitted to flow off the Lot or Parcel onto adjacent Lots, streets, Parcels, or Master Common Areas (including washes or channels). Each Owner shall defend, indemnify and hold Declarant, the Master Association and all other Owners harmless from, of, for and against any claims, damages, obligations, liabilities, losses, expenses or fees (including attorneys' fees) arising from or related to any impermissible off-site discharge from said Owner's Lot or Parcel.

4 3 34 Environmental Protections No Lot or Parcel, nor any facilities on the Lot or Parcel, shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose,



transfer, produce or process Hazardous Substances or solid waste in violation of any Environmental Law As used in this paragraph, "Hazardous Substances" means any substances, water, pollutants, contaminants or materials which pose a risk of injury or threat to health or the environment or becomes regulated under any Environmental Law including, without limitation, petroleum and petroleum derivatives and asbestos, "Environmental Law" means any federal, state or local law, including statutes, ordinances, rules, common law and guidelines now in effect and/or hereinafter modified or enacted, pertaining to the health, industry, hygiene or the environment including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Superfund Amendments and Recovery Act, the Toxic Substances Control Act, the Superfund Amendments and Reauthorization Act, the Clean Air Act, the Clean Water Act, the Safe Water Drinking Act and Solid Waste Disposal Act

4 3 35 Waivers The Board, in its good-faith discretion, may grant such waivers of the restrictions contained in this Section 4 3 as it shall deem appropriate, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration

4 3 36 Declarant's Exemption Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of Lots and Parcels within Montelena

## ARTICLE 5

### ORGANIZATION OF MASTER ASSOCIATION

5 1 Formation of Master Association The Master Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration

5 2 Board of Directors and Officers The affairs of the Master Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Master Association The Board shall determine the compensation to be paid to the manager or any other employee of the Master Association

5 3 The Montelena Rules By a majority vote of the Board, the Master Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Montelena Rules The Montelena Rules may, for

example, establish certain fees for violations of the provisions of this Declaration or of any rules, regulations or Design Guidelines promulgated hereunder, or restrict and govern the use of any Master Common Area by any Member, Lessee or Resident, provided, however, that the Montelena Rules shall not be inconsistent with this Declaration, the Articles, the Bylaws or any applicable Tract Declaration. The Montelena Rules and fees may be different for different classifications of users, including, but not limited to, Owners of Residential Parcels and Non-Residential Parcels, Lessees, employees or affiliates of the Declarant, guests or social invitees, or otherwise. The posting of the Montelena Rules and fees in a conspicuous manner and location within Montelena or the publication in a community newsletter of general circulation within Montelena shall be deemed sufficient notice to all permitted users. The Board, in its discretion, may provide notice of the Montelena Rules and fees by other means or methods. Upon adoption, the Montelena Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

**5 4 Personal Liability** No member of the Board or of any committee of the Master Association, no officer of the Master Association and no manager or other employee of the Master Association shall be personally liable to any Member, or to any other Person, including the Master Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Master Association, the Board, the manager, any representative or employee of the Master Association or any committee, committee member or officer of the Master Association, provided, however, the limitations set forth in this Section 5 4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**5 5 Satellite Associations** If any homeowners or similar association is to be formed by the Developer (other than the Declarant) of a Parcel or number of Lots, the articles of incorporation and bylaws or other governing documents for such Satellite Association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that such Satellite Association and the rights of its members are subject and subordinate to this Declaration, the Articles and Bylaws of the Master Association, any applicable Tract Declaration and the Montelena Rules.

## ARTICLE 6

### MEMBERSHIPS AND VOTING

**6 1 Owners of Lots and Parcels** Each Owner of a Lot or Parcel which is subject to assessment, pursuant to Article 7 hereof, shall be a Member of the Master Association. Each such Membership shall be appurtenant to and may not be separated from ownership of the Parcel or Lot to which the Membership is attributable and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this Section 6 1.

**6 2 Declarant** The Declarant shall be a Member of the Master Association for so long as Declarant is the Owner of any Lot or Parcel in Montelena.

**6 3 Voting**

**6 3 1 Memberships** The Master Association shall have two (2) classes of voting Memberships

**6 3 1 1 Class A** Class A Memberships shall be all Memberships, except the Class B Membership, which are appurtenant to Residential Parcels, and each Owner of a Residential Parcel shall be entitled to one (1) vote for each Lot owned by such Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof or any applicable Tract Declaration

**6 3 1 2 Class B** Until converted to Class A Memberships as provided below, the Membership owned by Declarant shall be a Class B Membership. At the time of any vote by the Members of the Master Association, the Class B Membership shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following

(i) The date when the total votes outstanding in the Class A Membership held by Owners subject to full assessment equal the total votes outstanding in the Class B Membership, or

(ii) The date Declarant notifies the Board that Declarant is terminating its Class B Membership

**6 3 2 Satellite Associations** Declarant expressly reserves the right to require the establishment, in accordance with the applicable terms of this Declaration, of a Satellite Association for one or more Residential Parcels. Declarant further reserves the right to require, through the terms of the applicable Tract Declaration, that the votes of all Memberships held by Owners of Residential Parcels be cast only by the Satellite Association designated in the applicable Tract Declaration as entitled to cast the votes of the Members. In such event, the Satellite Association's board of directors shall cast such votes in accordance with the Tract Declaration and the Satellite Association's articles of incorporation and bylaws

**6 3 3 Declarant Retention of Voting Rights** Notwithstanding anything contained in this Article or elsewhere in this Declaration, until such time as an Owner (other than Declarant) is required to pay a full Assessment, such Owner shall not possess any voting rights in the Master Association and Declarant shall be entitled to exercise any and all voting rights otherwise entitled to be cast by such Owner as a result of its ownership of such Lot or Parcel or portion thereof

**6 4 Right to Vote** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one (1) person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other Owners of the same

Membership unless objection thereto is made at the time the vote is cast. If more than one (1) vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

6.5 Membership Rights Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles, Bylaws and any applicable Tract Declarations, as the same may be amended from time to time.

6.6 Transfer of Membership The rights and obligations of the Owner of a Class A Membership in the Master Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel and then only to the transferee of ownership of the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effectuated by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof. The Master Association may require the new Owner of a Lot or Parcel to pay to the Master Association, or its designated representative, a transfer fee in an amount to be set by the Board, and payment of the transfer fee shall be secured by the Assessment Lien.

6.7 Suspension of Voting Rights If any Owner is delinquent in the payment of any Assessments or other amounts due hereunder or is otherwise in default under any of the provisions of this Declaration and such violation is not cured before any meeting of the Members where votes are to be taken, the Owner's right to vote as a Member of the Master Association shall not be exercisable for such meeting and shall remain suspended until all payments, including accrued interest, penalties and attorneys' fees as set forth below, are brought current, and until any other infractions or violations of this Declaration are cured.

6.8 Initial Capital Contribution Each purchaser of a Lot from Declarant (other than a Developer), and each purchaser of a Lot from a Developer, shall pay to the Master Association immediately upon becoming the Owner of a Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment for a Lot. Funds paid to the Master Association pursuant to this Section may be used by the Master Association for payment of operating or capital expenses or any other purpose permitted under the Master Association Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Master Association pursuant to this Declaration. Payments made pursuant to this Section shall be deemed a contribution to the working capital of the Master Association.

6.9 Contribution to Reserves

6.9.1 Except as otherwise provided in Section 6.9.2, each Person who purchases or otherwise becomes the Owner of a Lot shall pay to the Master Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment for a Lot (the "Reserve Contribution") as a contribution to the Master Association's

reserves for the future periodic maintenance, repair or replacement of the Master Common Area. The Reserve Contribution shall be in addition to, and not in lieu of, any other Assessments or amounts payable to the Master Association by the Owner making the Reserve Contribution, and the Reserve Contribution shall be secured by the Assessment Lien. The Reserve Contribution shall be deemed a contribution to the capital of the Master Association.

6 9 2 Notwithstanding the above, no Reserve Contribution shall be payable with respect to the transfer or conveyance of title to a Lot

6 9 2 1 by or to the Declarant,

6 9 2 2 by or to a Developer holding title solely for purposes of development and resale to a third-party user,

6 9 2 3 to any Person for the purpose of allowing the grantor to immediately lease back the Lot from the grantee,

6 9 2 4 by a co-Owner to any Person who was a co-Owner immediately prior to such transfer,

6 9 2 5 to the Owner's estate, surviving spouse or heirs at law upon the death of the Owner,

6 9 2 6 to an entity in which the grantor owns a majority interest unless the Board determines, in its discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution,

6 9 2 7 to an entity wholly owned by the grantor or to a family trust or family limited partnership created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law in which the grantor owns a majority interest, provided, upon any subsequent transfer of an ownership interest in such entity, the Reserve Contribution shall become due,

6 9 2 8 to an institutional lender as security for the performance of an obligation pursuant to a mortgage or deed of trust, or

6 9 2 9 as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a recorded contract for the conveyance of real property subject to A R S 33-741, et seq

6 9 3 The Master Association shall use and apply all Reserve Contributions to pay costs and expenses related to the design, construction, maintenance, repair or replacement of the Master Common Area, for the design and construction of additions to or expansions of the Master Common Area. In addition, Reserve Contributions may be used for such other purposes as may be approved by the written consent or affirmative vote, or any combination thereof, of Owners having

two thirds (2/3) of the votes entitled to be cast by Class A Members of the Master Association, and by the Declarant for so long as the Declarant is the Class B Member of the Master Association

## ARTICLE 7

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

#### 7.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges

The Declarant, for each Lot or Parcel now or hereafter established within Montelena, hereby covenants and agrees, and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Master Association the following Assessments and charges (1) Annual Assessments established by this Article, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article, and (3) Maintenance Charges established by Article 10, all such Assessments and charges to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, Reserve Contributions, Maintenance Charges and all other amounts payable hereunder, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge, continuing servitude and lien upon the Lot or Parcel against which each such Assessment or other fee or charge is made, which lien (the "Assessment Lien") shall be for the benefit of, and enforceable by, the Master Association. Each Assessment, Maintenance Charge and Reserve Contribution, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot or Parcel at the time the Assessment, Maintenance Charge or Reserve Contribution was due. The personal obligation for delinquent Assessments, Maintenance Charges and Reserve Contributions shall not pass to the successors in title of the Owner unless expressly assumed by such successors.

7.2 Annual Assessments To provide for the uses and purposes specified in Article 9 hereof, including the establishment of replacement and maintenance reserves, the Board shall assess against each Membership an Annual Assessment. The amount of the Annual Assessment shall be determined with the objective of fulfilling the Master Association's obligations under this Declaration to provide for the source of funds to pay the Common Expenses. At least seventy-five (75) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including reserve contributions made pursuant to Section 7.17. The budget shall reflect sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments (e.g., user fees, subsidies, etc.), and the amount to be generated through assessments authorized in this Declaration. Any costs associated with the maintenance and operation of the Master Common Areas shall be included in the budget of Common Expenses and allocated as part of the Annual Assessment. Within thirty (30) days after the Board adopts a final budget, it shall send a copy to each Owner of a Lot or Parcel, along with a notice of the amount of the Annual Assessment and a summary of the allocations. The budget and assessment are effective upon the Board's adoption, provided, the Board may not exceed the limit imposed by Section 7.4 without the affirmative vote or written consent of Owners representing at least two-thirds (2/3) of Members eligible to vote as further provided in Section 7.4. The Board may, during any Assessment Period, revise the amount of the Annual Assessment to meet expenses which exceed

the amounts anticipated by the Master Association and collect such increased Annual Assessment in accordance with procedures established pursuant to Section 7 11 below. The Annual Assessment shall be assessed against each Member commencing with the year the first Tract Declaration is recorded, provided, however, that if fulfillment of the purposes of the Master Association does not require the imposition of an Annual Assessment at that time, the Board may delay the initial imposition of the Annual Assessment against each Member until such time as the fulfillment of the purposes of the Master Association requires such imposition. Notwithstanding the foregoing or anything herein to the contrary, in no event shall the initial Assessment Period commence prior to January 1, 2004.

**7 3 Rate of Assessment, Shortfall** Except for Lots and Parcels owned by the Declarant which are exempt from Assessment under Section 7 3 3 and, except as otherwise may be set forth in the applicable Tract Declaration, the amount of any Annual Assessment or Special Assessment, as the case may be, to be levied against each Lot and Parcel shall be determined on the basis of the number of Lots owned within Montelena.

**7 3 1** An Owner shall be assessed a reduced amount of the uniform amount established pursuant to Section 7 8 below until the occurrence of specified events, as follows:

**7 3 1 1** Each Owner of a Lot the use of which is limited hereby or by a Recorded Tract Declaration to Single Family Residential Use shall be assessed a reduced amount until the earlier of (i) the completion of the first Dwelling Unit on the Lot, or (ii) two (2) years from the date the title is first transferred from Declarant or a Developer to an Owner. The applicable reduced amount shall be determined by the Board from time to time in its sole discretion, but in no event shall the reduced amount be greater than two-thirds (2/3) of the uniform amount (i.e., at least a 1/3 reduction). Following the first to occur of the foregoing events, such Owner thereafter shall be assessed one hundred percent (100%) of the uniform amount. For the purposes of this Section 7 3 1 1, a Dwelling Unit shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy.

**7 3 1 2** Each Owner of a Parcel the use of which is limited hereby or by a Recorded Tract Declaration to Single-Family Residential Use shall be assessed based upon the number of Lots permitted upon the Parcel by the applicable Tract Declaration as would otherwise be attributable to the Lots as determined in accordance with Sections 7 3 1 1 above. At such time as a subdivision plat or other instrument creating Lots is recorded covering all or part of the Parcel, the Assessments attributable to the Lots shall be determined as set forth above, and the Owner of the remainder of the unplatted portion of the Parcel, if any, shall be assessed based on the number of Lots permitted by the Tract Declaration minus the number of Lots included within the Recorded plat. All Assessments attributable to the Parcel (as opposed to the Lots) shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public. Such Owner shall be assessed two-thirds (2/3) of the uniform amount established pursuant to Section 7 8 below multiplied by the number of Lots attributable to the Parcel. Following recordation of a subdivision plat with respect to such a Parcel, the Owner shall be assessed as provided in Section 7 3 1 1 above.

7 3 1 3 Dedication of portions of a Parcel for public rights-of-way or similar purposes shall not result in the reduction of the Assessments attributable to the Parcel, rather, such Assessments shall be attributed to the portion of the Parcel not constituting Exempt Property on a fair and equitable basis as determined by the Board. Except as set forth above, the exercise by a governmental entity of the power of eminent domain or condemnation of a Parcel or a substantial portion of a Parcel shall result in the reduction of Assessments attributable to such Parcel for so long as such portion remains Exempt Property, such reduction to be determined by the Board based on the gross square footage of the real property taken by eminent domain or condemnation.

7 3 1 4 If the Assessment for a particular Lot or Parcel is not apparent, or if any question or conflict arises regarding the Assessment for a particular Lot or Parcel, the determination of the Declarant, so long as Declarant owns any portion of Montelena, and thereafter the Board, as to the applicable classification shall be controlling.

7 3 2 If approved by the Board in its sole discretion, reduced Assessments referred to in Section 7 3 1 above may be continued for unimproved portions of Parcels when improvements are to be phased. The portions of the Assessments affected by the phasing shall be determined by the Board.

7 3 3 So long as there is a Class B Membership, Lots and Parcels owned by the Declarant shall not be subject to Assessment, but Declarant shall be required to pay to the Master Association the difference between the cost of operating and administering the Master Association and the income from Assessments as provided below. When the Class B Membership ceases in accordance with Section 6 3 hereof, Declarant no longer shall be required to subsidize the cost of operating and administering the Master Association.

7 3 4 During any period that Declarant is paying reduced Assessments pursuant to this Section 7 3, Declarant shall be required to pay to the Master Association annually such cash funds as may be necessary to pay the difference between the cost of operating and administering the Master Association. However, in no event shall Declarant be obligated to pay or contribute money to the Master Association in excess of the amount of the Annual Assessments that would have been payable by Declarant if the Lots and Parcels owned by Declarant as of the end of the applicable fiscal year had been paying the full amount of the Annual Assessment.

7 3 5 If the rate of Assessment for a Parcel or Lot increases during the period to which an Annual Assessment (or any Special Assessment) is attributable, the Assessment shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate.

7 4 Increase to Annual Assessments The increase to the Annual Assessment established by the Board shall be subject to the following:

7 4 1 The Annual Assessment may be increased by an amount that is not more than twenty percent (20%), or such greater percentage as may be allowed by law, greater than the Annual Assessment for the immediately preceding fiscal year, except as provided in Section 7 4 2 below and except for increases necessary for emergency situations as described below.



7 4 2 The Annual Assessment may be increased above the amount determined under Section 7 4 1 above by a vote of two-thirds (2/3) of each class of eligible Members then entitled to vote who are voting in person or by proxy at a meeting duly called for such purpose

7 4 3 An emergency situation is any one of the following

7 4 3 1 an extraordinary expense required by an order of a court,

7 4 3 2 an extraordinary expense necessary to repair or maintain Montelena or any part thereof for which the Master Association is responsible where a threat to personal safety is discovered, or

7 4 3 3 an extraordinary expense necessary to repair or maintain Montelena or any part thereof for which the Master Association is responsible which could not have been reasonably foreseen by the Board in preparing a budget for the fiscal year However, prior to the imposition or collection of such an Assessment, 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 Such resolution shall be distributed to the Members with the notice of such Assessment

7 5 [RESERVED]

7 6 Special Assessments for Capital Improvements and Extraordinary Expenses In addition to the Annual Assessments authorized above, the Master Association may levy, in any Assessment Period, a Special Assessment applicable to that Assessment Period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Master Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such Special Assessment shall have the assent of Declarant, if it still holds a Class B Membership or, if no Class B Membership exists, two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose The provisions of this Section shall not preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes

7 7 [RESERVED]

7 8 Uniform Amount of Assessment Except as otherwise specifically set forth in this Article 7, the amount of any Annual Assessment or Special Assessment shall be fixed by the Board at a uniform amount per Lot The Annual Assessments may be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Board and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Master Association approving the Special Assessment

\* 7 9 [RESERVED]

**7 10 Notice and Quorum for Any Action Authorized Under Sections 7 4 2 or 7 6**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 7 4 2 or 7 6 of this Article shall be sent to all Members subject to such Annual Assessment or Special Assessment no less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**7 11 Rules Regarding Billing and Collection Procedures**

The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Master Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days' written notice, prior to such foreclosure or enforcement at the address of the Member on the records of the Master Association, that the Assessment, or any installment thereof is, or will be, due, and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Master Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period, successor Owners of Lots or Parcels shall be given credit on a prorated basis for prepayments made by prior Owners. If the owner of a Membership becomes liable for payment of an increased sum pursuant to this Article during the Assessment Period, he shall notify the Master Association, but his failure to notify the Master Association shall not relieve him of the liability for such amounts. The amount of the Annual Assessment against Members who become such during an Assessment Period upon the recording of a Tract Declaration shall be prorated and such new Members shall not be liable for any previously levied Special Assessment. Declarant expressly reserves the right to provide in the applicable Tract Declaration that it shall have the right to assess a Satellite Association for all Assessments attributable to Members whose Lots or Parcels are located within the Satellite Association.

**7 12 Collection Costs and Interest on Delinquent Assessments**

Any Assessment or installment thereof not paid within fifteen (15) days of when due (or such longer period as may be required by Arizona law) shall be deemed delinquent and shall bear interest at a rate established by the Board, and, in addition, a late fee, the amount of which shall be determined by the Board and which shall not exceed the maximum permitted under Arizona law, may be assessed for each late occurrence, and the Member whose Assessment is delinquent shall be liable for all costs, including attorney's fees, which may be incurred by the Master Association in collecting the same. The Board also may, but is not obligated to, record a notice of delinquent assessment against any Lot or Parcel as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Master Association for the Master Association's cost in recording such notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Master Association secured by the Assessment Lien.

7 13 Evidence of Payment of the Assessments Upon receipt of a written request (i) from a Member or any other interested Person, the Master Association, within a reasonable period of time thereafter, shall issue, or cause an appropriate officer to issue, to such Member or other interested Person a written certificate setting forth whether or not (a) all Assessments (including costs and attorney's fees, if any, as provided in Section 7 12 above) have been paid with respect to any specified Lot or Parcel as of the date of such certificate, or (b) if all Assessments have not been paid, the amount of such Assessments (including costs and attorney's fees, if any) due and payable as of such date, and (ii) from a lienholder, Member or Person designated by a Member, the Master Association shall issue, or cause an appropriate officer to issue, a statement setting forth the amount of any unpaid Assessment against the specified Lot or Parcel, such statement to be furnished within fifteen (15) days after receipt of the request. The Master Association may make a reasonable charge for the issuance of such certificates or statements, which charge must be paid at the time the request for any such certificate or statement is made and which charge, if applicable, may include an allowance for any amount charged to the Master Association by its management company for the issuance of such certificate of statement on behalf of the Master Association. Any such certificate or statement, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Parcel in question if the certificate or statement is requested by an escrow agency that is licensed pursuant to Arizona law.

7 14 Property Exempted from the Annual, Special Service Area and Special Assessments Exempt Property and all other property that is not Assessable Property shall be exempted from the Annual Assessments and Special Assessments.

7 15 Transfer Fee Each person or entity who purchases a Lot or Parcel (other than a Developer) shall pay to the Master Association and/or any management company employed by the Master Association immediately upon becoming the Owner of the Lot or Parcel a transfer fee in such amount as is established from time to time by the Board and/or such management company. Such transfer fee shall be payable at the closing of the transfer, and shall be secured by the Assessment Lien.

7 16 [RESERVED]

7 17 Budgeting for Reserves The Board may, in its discretion, include in the budget amounts for capital and operating reserves. Reserve calculations shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. Reserves shall be funded as the Board, in the exercise of its business judgment, deems appropriate. The Board may enter into agreements with the Declarant, on negotiated terms, under which the Declarant may obligate itself (by bond, contract, etc.) to provide reserve funds as needed on a "cash basis" in lieu of the Master Association funding reserves on an accrual basis. So long as the Board exercises business judgment in determining an adequate amount of reserves, the amount of the reserve fund, if any, shall be considered adequate. Notwithstanding the foregoing, it is specifically provided that within sixty (60) days prior to the date on which the Declarant relinquishes control of the Master Association to the Members and the Class B Membership is converted to a Class A Membership pursuant to Section 6 3 1 2 above, Declarant shall cause a

reserve study to be performed and all reserves required by such study to be funded. Such funding shall be made proportionately by Declarant and all Developers, or by such other means as the Board deems appropriate in its reasonable business judgment. If the funding is to be made proportionately by Declarant and the Developers, each Developer shall be responsible for payment of a percentage of the required funding equal to the number of Lots purchased by the Developer divided by the total number of Lots within Montelena, and the balance of the required funding shall be paid by Declarant.

## ARTICLE 8

### ENFORCEMENT OF ASSESSMENT LIEN AND PAYMENT OF ASSESSMENTS AND OTHER CHARGES

**8 1 Master Association as Enforcing Body** The Declarant, the Master Association or any Member may enforce the provisions of this Declaration and the Tract Declarations by any appropriate action, whether in law or in equity but not at the expense of the Declarant or the Master Association. A Member need not own property covered by a Tract Declaration to enforce the covenants and restrictions set forth in such Tract Declaration.

**8 2 Master Association's Remedies to Enforce Payment of Assessments and Other Fees and Charges** If any Member fails to pay the Annual Assessments, Special Assessments or Reserve Contributions or any other amounts payable hereunder, or any installments thereof when due, or to pay Maintenance Charges assessed pursuant to Article 10, the Master Association may enforce the payment of such Assessments and other fees and charges and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Master Association does not prejudice or waive its right to exercise the other remedy)

**8 2 1** Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments, fees and other amounts owed, and

**8 2 2** Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages or deeds of trust (including, where applicable, the right to recover any deficiency) and, if foreclosed as a realty mortgage, the Lot or Parcel may be redeemed after foreclosure sale as provided by law.

**8 3 Subordination of Assessment Lien to First Mortgage or Deed of Trust, Priority of Lien** The Assessment Lien provided for herein shall be subordinate to (a) liens and encumbrances recorded prior to the recordation of this Declaration, (b) any recorded first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns, and the seller's interest in a first contract for sale on a Lot recorded prior to the Assessment Lien, and (c) liens for real estate taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot or Parcel, specifically including,

but not limited to, the assessment lien of any Satellite Association. The sale or transfer of any Lot or Parcel shall not affect the Assessment Lien, provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or Parcel free of the Assessment Lien for all Annual Assessments, Special Assessments, Maintenance Charges, Reserve Contributions and other fees and charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except such prior liens and encumbrances, liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual Assessments, Special Assessments, Maintenance Charges, Reserve Contributions and other fees and charges then owing and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

**8.4 Costs to be Borne by Member in Connection with Enforcement of Payment** In any action taken pursuant to Section 8.2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments, Special Assessments, Maintenance Charges, Reserve Contributions and all other fees and charges owed hereunder, together with interest and late charges on all such delinquent amounts as provided in Section 7.12 and the Master Association's collection costs and attorney's fees, including those costs and fees specified in Section 7.12.

## ARTICLE 9

### USE OF FUNDS, BORROWING POWER

**9.1 Purposes for which Master Association's Funds May Be Used** The Master Association shall apply all funds and property collected and received by it (including the Annual Assessments and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the purposes of the common good and benefit of Montelena and the Members and Residents. In furtherance of such purposes, the Master Association may use said funds and property, among other things, for (i) discharging and performing the Master Association's duties and obligations under the Master Association Documents, (ii) exercising the rights and powers granted to the Master Association by the Master Association Documents, and (iii) to the acquisition, construction, alteration, management (including risk management), maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without Montelena, which may be necessary, desirable or beneficial to the general common interests of Montelena, the Members and the Residents. The following are some, but not all, of the areas in which the Master Association may seek to aid, promote and provide for such common benefit: maintenance of landscaping on Master Common Areas and public right-of-way and drainage areas within Montelena, obtaining of liability insurance,

supplying of utilities and other public services, providing for communication and transportation within and dissemination of information concerning Montelena, indemnification of, and insurance for the benefit of, officers and directors of the Master Association and generally protecting the health and safety of the Members and the Residents. The Master Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter

9 2 Borrowing Power The Master Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as in the determination of the Board is necessary or appropriate

9 3 Master Association's Rights in Spending Funds from Year to Year The Master Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual Assessments, Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Master Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Master Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Master Association and the accomplishment of its purposes

9 4 Insurance The Master Association shall maintain hazard insurance and insurance against liability incurred as a result of death or injury to persons or damage to property on the Master Common Areas, with the amount and type of coverage to be determined in the reasonable business judgment of the Board

## ARTICLE 10

### MAINTENANCE

10 1 Master Common Areas The Master Association, or its duly delegated representative, shall operate, maintain and otherwise manage, all Master Common Areas, including without limitation, any Community Recreation Facilities which may exist from time to time, and all other areas which the Board, pursuant to the authority contained in this Declaration, has the right and elects to maintain, and such other areas required to be maintained by the Master Association as identified in a recorded document or instrument signed by the Declarant or the Master Association. The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Master Common Areas so the Montelena development will reflect a high pride of ownership. In this regard, the Master Association may (but without any obligation to do so), in the discretion of the Board

10 1 1 Reconstruct, repair, replace or refinish any improvement or portion thereof upon any Master Common Area,

10 1 2 Replace injured and diseased trees and other vegetation on any Master Common Area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes,

10 1 3 Place and maintain upon any Master Common Area such signs as the Board may deem appropriate for proper identification, use and regulation thereof, and

10 1 4 Do all such other and further acts which the Board deems necessary to preserve and protect the Master Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration

The Board shall be the sole judge as to the appropriate maintenance of all Master Common Areas Any cooperative action necessary or appropriate for the proper maintenance and upkeep of any Master Common Area shall be taken by the Board or by its duly delegated representative

If any Recorded subdivision plat, Tract Declaration, deed restriction or this Declaration permits the Board to determine whether Owners of certain Lots or Parcels will be responsible for maintenance of certain Master Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Lessees and Residents of Montelena for the Master Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board The Board may cause the Master Association to contract with others for the performance of the maintenance and other obligations of the Master Association under this Article 10, and, in order to promote uniformity and harmony of appearance, the Board may also cause the Master Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Master Association and Owner may agree upon Fees for the above provided maintenance services are secured by the Assessment Lien

10 2 Assessment of Certain Costs of Maintenance and Repair of Master Common Areas and Public Areas If the need for maintenance or repair of Master Common Areas and other areas maintained by the Master Association is caused through the willful or negligent act of any Member, his family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot or Parcel is subject, and shall be secured by the Assessment Lien Any charges or fees to be paid by the Owner of a Lot or Parcel in connection with a contract entered into by the Master Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien

10 3 Lots Each Owner of a Lot or Parcel shall be responsible for the maintenance of his Lot or Parcel, and all buildings, Dwelling Units or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, which is Master Common Area or which is the responsibility of a Satellite Association All buildings, Dwelling Units and other Improvements shall at all times be kept in good condition and repair No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets

All Lots or Parcels upon which no Dwelling Units, buildings or other Improvements have been constructed shall be maintained in a weed free and attractive manner

**10 4 Improper Maintenance and Use of Lots or Parcels** If any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or Parcels or other areas of Montelena which are substantially affected thereby or related thereto, or if any portion of a Lot or Parcel is being used in a manner which violates this Declaration or any Tract Declaration applicable thereto, or if the Owner of any Lot or Parcel is failing to perform any of its obligations under this Declaration, any Tract Declaration or the Design Guidelines, standards and rules and regulations of either the Design Review Committee or the Declarant, as applicable, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered, but shall not be required, to enter the Lot or Parcel and cause such action to be taken, and the cost thereof (together with a fee determined by the Board in its sole discretion on a case by case basis to compensate the Master Association for its overhead and supervision relating to such action) shall be deemed a Maintenance Charge and shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject to, and shall be secured by, the Assessment Lien

**10 5 Improper Maintenance by Satellite Association** If any Satellite Association is failing to perform any of its obligations under this Declaration, any Tract Declaration or the Design Guidelines, standards and rules and regulations of the Design Review Committee with respect to the maintenance of any common area owned by such Satellite Association, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice to the offending Satellite Association that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Satellite Association's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof (together with a fee determined by the Board in its sole discretion on a case-by-case basis to compensate the Master Association for its overhead and supervision relating to such action) shall be prorated among, added to, and become part of the Assessment against the Lots included within the Parcel for such Satellite Association, and shall be secured by the Assessment Lien

**10 6 Landscaping Replacement** Landscaping originally planted on the Master Common Areas may exceed the landscaping that is ultimately planned for Master Common Areas due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental entities in connection with Montelena, even if the location or type of specific plants is different than the types or locations shown on such approved landscaping plans. Neither Declarant nor any other installer of landscaping on Master Common Areas shall be



responsible for replacement of landscaping that dies more than ninety days following installation or that requires replacement due to vandalism, lack of proper watering or maintenance by the Master Association or damage due to negligence, the Master Association shall be solely responsible for such replacement (subject to potential recovery by the Master Association from any vandal or negligent person)

## ARTICLE 11

### DESIGN REVIEW COMMITTEE

11.1 Establishment Declarant shall establish a Design Review Committee, which shall exercise all powers of the Design Review Committee with regard to all Lots and Parcels. Declarant shall establish and adopt Residential Design Review Guidelines and procedural rules and regulations to direct the Design Review Committee in the performance of its duties. The Design Review Committee shall consist of no less than three (3) regular members and an alternate member, each appointed by Declarant. The appointees need not be Owners, Lessees or Residents and need not possess any special qualifications except such as Declarant may, in its discretion, require. Declarant may replace any member of the Design Review Committee at any time with or without cause. If any member of the Design Review Committee dies or resigns, Declarant shall replace said member within ninety (90) days following such death or resignation. Pending the replacement of such deceased or resigned member, the remaining member or members of the Design Review Committee shall have full authority to act under, and in accordance with, this Declaration. Declarant's right to appoint members of the Design Review Committee shall cease upon the earliest to occur of the following: (i) at such time as Declarant no longer owns any Lot or Parcel in Montelena, or (ii) when such rights are expressly relinquished by Declarant to the Board in writing. Once the Declarant's right to appoint members to the Design Review Committee ceases, the Board shall be vested with that right and with all rights of the Declarant pertaining to the Design Review Committee, however, only those directors who are Class A Members shall have the authority to appoint and remove the members of the Design Review Committee.

11.2 Purpose The purpose of the Design Review Committee is to maintain uniformity of architectural and landscaping standards throughout Montelena and thereby enhance the aesthetic and economic value of Montelena. The Design Review Committee is hereby empowered to supplement and amend the Design Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary, provided, however, that such modifications are in general conformity with the standards set forth in this Declaration and the applicable Tract Declarations.

11.3 View Preservation Declarant, being sensitive to the fact that Montelena is located in an area that provides spectacular views of the adjacent surroundings, desires to ensure that development will occur in a fashion which is sensitive to the need to preserve available views of the surrounding areas, and as such the Design Review Guidelines may impose restrictions on the construction and installation of improvements that could, as determined by Declarant in its sole and absolute discretion, impair any such views.

11 4 Operation/Authority It shall be the duty of the Design Review Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. The Design Review Committee shall hold regular meetings in accordance with its procedural rules and regulations. A quorum for such meetings shall consist of a majority of the members and an affirmative vote of a majority of the quorum shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Design Review Committee shall review all complete applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections. If the Design Review Committee fails to furnish a written decision within forty-five (45) calendar days after a complete application has been submitted or resubmitted to it, then the application as submitted or resubmitted, as the case may be, shall be deemed approved. The Design Review Committee may require the submission of such additional information as deemed reasonably necessary by the Design Review Committee to consider any application. In reviewing each submission, the Design Review Committee may consider any factors it deems relevant. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. Subject to the provisions of Section 11 6 below, the Design Review Committee shall have the sole discretion to make final, conclusive and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures set forth herein. The Design Review Committee shall have broad discretionary powers in determining whether to approve an application, including without limitation the authority to deny approval to any application, notwithstanding compliance by the applicant with the Design Guidelines, and to grant approval to any application notwithstanding failure by the applicant to comply fully with the Design Guidelines. In addition, the Design Review Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Design Review Committee to exercise the judgment required by this Declaration. The Design Review Committee shall keep complete written records of all applications for approval submitted to it (including one set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Guidelines. All such records shall be maintained for a minimum of three years after approval or disapproval.

11 5 Fee The Board (or its designated representative) shall have the right, in its sole discretion, to assess against applicants a processing fee to defer the costs incurred by the Design Review Committee in considering any requests for approval submitted to it. If imposed, the fee shall be in such amount and payable in accordance with such schedule as reasonably determined by the Design Review Committee.

11 6 Appeal Any Owner or other Resident aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established by the Board. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the Board's opinion warrant a reconsideration. If the Board fails to allow an appeal or if the Board, after appeal, again rules in a manner aggrieving the appellant, the decision of the Board is final. If the decision of the Design

Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Design Review Committee. In this regard, the Board shall have the authority to modify or overrule the decision of the Design Review Committee on any matter presented to it.

**11 7 Limited Liability of Design Review Committee Approval** All plans, drawings and specifications approved by the Design Review Committee are not approved for engineering, design or architectural competence. Through its approval of such plans, drawings and specifications, the Design Review Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from such plans, drawings and specifications. Declarant, members of the Design Review Committee and members of the Board shall not be liable to the Master Association, any Owner or any other Person for any damage, loss or prejudice suffered or claimed because of

**11 7 1** the approval or disapproval of any plans, drawings or specifications, whether or not defective, or

**11 7 2** the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications

**11 8 Waiver** Each Owner acknowledges that it may not always be possible to identify objectionable features of proposed activity within the scope of this Article 11 until the work with respect thereto is completed, in which case it may be unreasonable to require changes to the Improvements involved. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.

**11 9 Nonapplicability to Declarant** The provisions of this Article are not to apply to any Lots and Parcels owned by Declarant or by any person affiliated with Declarant or, pursuant to Section 4 3 1, to a Developer.

**11 10 Additional Governmental Approvals** The approval of the Design Review Committee contemplated by this Article and required by Section 4 3 shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinance or rules and regulations of any county or municipality having jurisdiction over Montelena.

## ARTICLE 12

### RIGHTS AND POWERS OF MASTER ASSOCIATION

**12 1 Master Association's Rights and Powers as Set Forth in Articles and Bylaws** The Master Association, as the agent and representative of the Owners and Lessees, shall have the non-exclusive right to enforce the Covenants set forth in this Declaration, any Tract Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens

or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Master Association or by Declarant. Notwithstanding the foregoing, Declarant expressly intends that neither the foregoing nor anything else in this Declaration shall obligate or be construed to obligate Declarant or the Master Association, or their respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, any Tract Declaration or any provision hereof or thereof, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

**12.2 Contracts with Others for Performance of Master Association's Duties** Subject to the restrictions and limitations contained herein, the Master Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Master Association, or members of any committee, is employed by, or otherwise connected with, Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

**12.3 Reservation of Trade Name** Declarant hereby reserves all right, title and interest in the name "Montelena" for the uses set forth herein and any other use as Declarant may choose. No Person shall use the name "Montelena" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. This restriction shall be enforceable only by Declarant or any other person or entity designated by Declarant in a recorded instrument as Declarant's assignee of the prior approval and enforcement rights reserved hereby, and may be enforced by any remedy available at law or in equity, including without limitation the right to injunctive relief and to specific performance hereof.

## ARTICLE 13

### ANNEXATION AND DEANNEXATION

**13.1 Annexation Without Approval** The Additional Property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Master Association without the approval, assent or vote of the Master Association or its Members, provided that a Supplementary Declaration of Covenants, Conditions and Restrictions, as hereinafter described, covering the portion of the Additional Property sought to be annexed shall be executed and recorded by Declarant or its successors and assigns (and by the fee title holder(s) of the portion of the Additional Property sought to be annexed, if Declarant or its successors and assigns does not hold fee title to all of said property), provided, however, that no Supplementary

Declaration shall be so executed and recorded pursuant to this Section more than fifteen (15) years (i) subsequent to the recording of this Declaration or (ii) subsequent to the last recording of a Supplementary Declaration, whichever of (i) or (ii) shall have later occurred. Such execution and recording of a Supplementary Declaration shall constitute and effectuate the annexation of said portion of the Additional Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Master Association, and thereafter the Additional Property so annexed shall be part of the Property and all of the Owners of Parcels and Lots in the Additional Property so annexed shall automatically be Members of the Master Association. Although Declarant, its successors and assigns, shall have the ability to so annex all or any portion of the Additional Property, neither Declarant, nor its successors and assigns, shall be obligated to annex all or any portion of the Additional Property, and such Additional Property shall not become subject to this Declaration unless and until a Supplementary Declaration annexing such Additional Property shall have been so executed and recorded.

13.2 Deannexation Without Approval A portion or portions of the Property may be deannexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Master Association without the approval, assent or vote of the Master Association or its Members, provided that a Certificate of Deannexation covering the portion of the Property sought to be deannexed shall be executed and recorded by Declarant or its successors and assigns and the owner(s) of the portion of the Property covered by such Certificate of Deannexation which is not owned by Declarant or its successors and assigns. No Certificate of Deannexation shall be so executed and recorded pursuant to this Section more than fifteen (15) years subsequent to the recording of this Declaration.

13.3 Supplementary Declarations and Certificates of Deannexation The annexations and deannexations authorized under the foregoing Sections shall be made by Recording in the office of the County Recorder of the County, a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument with respect to the Additional Property which shall extend the plan of this Declaration to such property or a Certificate of Deannexation which shall remove the portion of the Property covered thereby from the plan of this Declaration. The Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, revoke, modify or add to the covenants established by this Declaration with respect to the existing Property.

## ARTICLE 14

### DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1 Dispute Resolution Declarant, each Satellite Association, and each Owner agree that it is in the best interest of all concerned to resolve disputes among and between Satellite Associations and among and between any Satellite Association or Owner and the Board without the emotional and financial costs of litigation. Accordingly, the Board is empowered to impose and enforce procedures and rules designed to encourage the resolution of disputes, including requiring

written notice of claims and the structured negotiation or mediation of disputes. Prior to the initiation of any administrative or judicial proceeding by one Satellite Association against another or by a Satellite Association or any Owner against the Board, the party initiating such action shall comply with the Board's procedures and rules. This Section serves as an agreement by the Satellite Associations and the Owner to submit their claims to such procedures or rules and the failure to abide by such requirements shall serve as a defense to any such action. The requirements of this Section shall not apply to any action by the Board to collect Assessments or other fees or charges authorized by this Declaration or a Satellite Association declaration, which actions may proceed in the Board's discretion directly without any prior procedure for claims resolution.

**14.2 Consensus for Master Association Litigation** The Master Association shall not commence a judicial or administrative proceeding without the approval of at least seventy-five percent (75%) of each class of Members then entitled to vote, excluding the voting power of any Owner who would be a defendant in such proceedings. This Section shall not apply, however, to (a) actions brought by the Master Association to enforce the Master Association Documents (including, without limitation, the foreclosure of liens), (b) the collection of Assessments, Reserve Contributions or other amounts owed hereunder, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Master Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. The Master Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Master Association obligations other than legal fees. If the Master Association commences any legal action or arbitration proceeding involving a claim, grievance or dispute (collectively, a "Claim") arising out of or relating to the interpretation, application or enforcement of the Master Association Documents, or the rights, obligations and duties of any party bound under the Master Association Documents (including, without limitation, the Declarant, the Master Association, each Satellite Association, their respective officers, directors, and committee members, all Persons subject to this Declaration, any Developer, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (the foregoing collectively "Bound Parties")) or relating to the design or construction of improvements on the Property, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Master Association in accordance with Section 14.4. Any Bound Party having a Claim against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the claim (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the date, time, location, Persons involved, and Respondent's role in the Claim, (ii) the factual and legal basis of the Claim, and (iii) what Claimant wants Respondent to do or not to do to resolve the Claim.

**14.3 Right to Enter, Inspect, Repair and/or Replace** Within a reasonable time after the receipt by Declarant of a Notice, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Master Common Area, any Lot or Parcel, including any building or Dwelling Unit constructed thereon, and/or any improvements for the purpose of inspecting and/or conducting testing to determine the validity of the Claim, and, if deemed necessary by Declarant, to correct, repair and/or replace the alleged

deficiency in the planning, design, engineering, grading, construction or development of the Master Common Area or any Lot or Parcel, or any improvement constructed on the Master Common Area or a Lot or Parcel which is the basis for the Claim (the "Alleged Defect") In conducting such inspection, testing, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the Lots, Parcels and/or the Improvements constructed thereon The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant In no event shall any statutes of limitations be tolled during the period in which Declarant conducts any inspection or testing of any Alleged Defects

**14.4 Use of Funds** If a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant alleging damages (i) for the costs of repairing or the replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect If the Claimant is the Master Association, the Master Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, reference or arbitration against Declarant which notice shall (at a minimum) include (i) a description of the Claim, (ii) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (iii) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (iv) the estimated cost to repair such Alleged Defect, (v) the name and professional background of the attorney retained by the Master Association to pursue the claim against Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (vi) a description of the fee arrangement between such attorney and the Master Association, (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (viii) the estimated time necessary to conclude the action against Declarant, and (ix) an affirmative statement from the Board that the action is in the best interests of the Master Association and its Members If the Master Association recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Master Association's reserve fund

**14.5 Tract Declaration with Differing Dispute Resolution Provisions** A Tract Declaration may contain alternate or supplemental dispute resolution procedures to those set forth in this Article Notwithstanding anything to the contrary contained herein, if a Tract Declaration states that the dispute resolution procedures contained therein are to be used for all or certain types of disputes, then the dispute resolution procedures set forth in the Tract Declaration shall control the types of disputes described therein if and to the extent they involve Lots covered by the Tract Declaration in lieu of the procedures contained in this Article, provided, however, the dispute

resolution provisions contained in a Tract Declaration shall not affect Owners of Lots or Parcels that are not subject to the provisions of the Tract Declaration

## ARTICLE 15

### TERM AMENDMENTS, TERMINATION

15 1 Term Method of Termination This Declaration shall be effective upon the date of its recordation and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended from time to time, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast in each class of Membership at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten-year extension. The Declaration may be terminated at any time if ninety percent (90%) of the votes cast shall be cast in favor of termination at a meeting held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote from the holders of recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Section 8 3 above, on seventy-five percent (75%) of the Lots and Parcels upon which there are such recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of the County, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Master Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Master Association shall be dissolved pursuant to the terms set forth in its Articles.

### 15 2 Amendments

15 2 1 Amendments to this Declaration This Declaration may be amended by recording with the County Recorder of the County, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Sections 15 3 and 15 4 of this Article, shall certify that the amendment has been approved by the affirmative vote, or written consent, or any combination thereof, of the Owners casting at least seventy-five percent (75%) of the votes then entitled to be cast.

15 2 2 Amendment to Tract Declarations Unless the applicable Tract Declaration provides otherwise, or as otherwise set forth in Section 4 2, Tract Declarations may be amended by approval of the Board and the Owners of all Lots and Parcels subject to the Tract Declaration. As long as the Declarant owns any Lot or Parcel in Montelena, Declarant's approval is also required for any amendment to a Tract Declaration.

15 3 Right of Amendment if Requested by Governmental Agency or Lending Institutions Anything in this Article to the contrary notwithstanding, Declarant reserves the right, but shall not be obligated, to amend all or any part of this Declaration to such an extent and with



such language as may be requested by the FHA, VA, Fannie Mae or Freddie Mac and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The recording of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when recorded, shall be binding upon all of Montelena and all persons having an interest therein. It is the desire of Declarant to retain control of the Master Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt, as an amendment thereto, other and different control provisions. Except as provided in this Section 15 3 and in Section 15 4, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 15 2 of this Article.

**15 4 Declarant's Right of Amendment** Notwithstanding anything in this Article to the contrary, Declarant shall, for so long as it possesses a Class B Membership, be entitled to unilaterally amend this Declaration to correct minor errors and omissions.

**15 5 Rights of First Mortgagees**

**15 5 1** Any first mortgagee will, upon written request, be entitled to (i) inspect the books and records of the Master Association during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Master Association, a financial statement of the Master Association for the immediately preceding fiscal year of the Master Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Master Association and be permitted to designate a representative to attend all such meetings.

**15 5 2** No Lot shall be partitioned or subdivided without the prior written approval of the holder of any first mortgage on such Lot.

**15 5 3** Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) of Owners (other than the Developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Master Association shall not be entitled to

(1) Seek to abandon, partition, subdivide, sell or transfer the Master Common Area owned, directly or indirectly, by the Master Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the

intended use of such Master Common Area shall not be deemed a transfer within the meaning of this Subsection,

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner,

(iii) Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Master Common Area,

(iv) Fail to maintain fire and extended coverage insurance on Master Common Area on a current replacement cost basis in an amount of at least one hundred percent (100%) of insurable value, or

(v) Use hazard insurance proceeds for losses to any Master Common Area, other than the repair, replacement or reconstruction of such Master Common Area

15 5 4 No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a first mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Master Common Area

15 5 5 Any first mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the first mortgagee shall be deemed to have approved such action if the Master Association has not received a negative response from such first mortgagee within thirty (30) days of the date of the Master Association's request

15 5 6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of this Declaration or any Tract Declaration, the provisions of this Section shall prevail, provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Declaration with respect to the number or percentages of Owners, or first mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Declaration, or (iii) certain actions of the Master Association as specified in Section 15 5 3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or first mortgagees shall prevail, provided, however, that notwithstanding the foregoing, the Declarant shall have the right to amend this Declaration in accordance with and pursuant to the provisions of Section 15 2 of this Article

## ARTICLE 16

[RESERVED]

## ARTICLE 17

### MISCELLANEOUS

17.1 Interpretation of the Covenants Except for judicial construction, the Master Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Master Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

17.2 Severability Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

17.3 Rules and Regulations In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Master Association shall have the right to adopt rules and regulations with respect to all other aspects of the Master Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration. Any new rule or any change to an existing rule that is proposed by the Master Association following termination of the Class B Membership shall become effective thirty (30) days after the mailing of notice to the Members of the proposed new rule or proposed change, unless prior to such date Members holding more than ten percent (10%) of the votes in the Master Association submit to the Board a written request that the Board call a meeting of the Members to consider the adoption of the new changed rule. The rule shall become effective at the adjournment of such meeting unless the passage of such rule is disapproved by Members holding more than fifty percent (50%) of the votes cast by Members in person or by proxy at the meeting.

17.4 Declarant's Disclaimer of Representations Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument signed by Declarant and recorded in the office of the County Recorder of the County, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Montelena can, or will be, carried out, or that any land now owned or hereafter acquired by it is, or will be, subjected by this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a Deed to a Lot or Parcel agrees that Declarant shall have no liability with respect thereto.

17.5 References to the Covenants in Deeds Deeds to, and instruments affecting, any Lot or Parcel or any part of Montelena may contain the Covenants herein set forth by reference to this

Declaration, but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee/Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns

17 6 Successors and Assigns of Declarant Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written, Recorded instrument expressly assigning such rights and powers

17 7 Gender and Number Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, words in the singular shall include the plural, and words in the plural shall include the singular

17 8 Captions and Titles All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof

17 9 Notices If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board, to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if personal notice of such action or meeting is given to such Owner, Lessee or Resident, and, if personal notice is impracticable, shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner

17 10 FHA/VA Approval If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA dedications of Master Common Areas (except where such dedication is required as of the date hereof to the City, the County, or other applicable government subdivision), annexation of additional property, and amendment of this Declaration As to any action required by this Section to be approved by FHA or VA before becoming effective or before being taken, such action shall be submitted to FHA or VA for approval, and if the agency whose approval is requested fails to disapprove the same, by written notice to the Master Association, Declarant or other Person requesting such approval, within thirty (30) days after delivery to such agency of the request for approval, the action in question shall be deemed approved by such agency

17 11 No Absolute Liability No provision of this Declaration shall be interpreted or construed as imposing on Owners absolute liability for damage to the Master Common Area,

Parcels or Lots Owners shall only be responsible for damage to the Master Common Area or Lots caused by the Owners' negligence or intentional acts

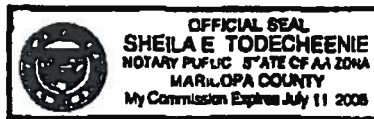
17 12 Conveyance or Encumbrance of Master Common Area Except as otherwise expressly provided herein, the Master Common Area shall not be mortgaged, encumbered, transferred or dedicated without the prior written consent or affirmative vote, or combination thereof, of the Declarant and of at least two-thirds (2/3) of the Owners of the Class A Memberships

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the date first above written

U S DEVELOPMENT LAND, LLC, an Arizona  
Limited liability company

By   
Michael Nicholas, Manager

STATE OF ARIZONA)  
  ) ss  
County of Maricopa )



The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of February, 2004, by MICHAEL NICHOLAS, as Manager of U S DEVELOPMENT LAND, LLC, an Arizona limited liability company, for and on behalf thereof

  
Notary Public

My Commission Expires

July 11, 2006

my documents Montelena CC&Rs clean 2 6 04