

Amended and Restated
Declaration of Covenants,
Conditions and Restrictions



February 8, 2024

This page is part of your document - DO NOT DISCARD



20240088421

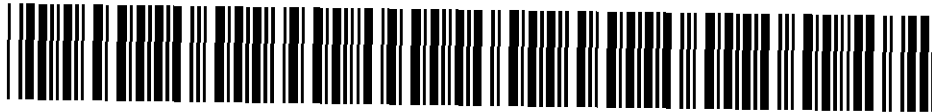


Pages:
0036

Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

02/08/24 AT 11:44AM

FEES:	124.00
TAXES:	0.00
OTHER:	0.00
SB2:	75.00
PAID:	199.00



LEADSHEET



202402080230016

00024202005



014528782

SEQ:
01

SECURE - Daily



THIS FORM IS NOT TO BE DUPLICATED

RECORDING REQUESTED BY:

Jeffrey A. Beaumont, Esq.
BEAUMONT TASHJIAN
5008 Chesebro Rd Suite 200
Agoura Hills, CA 91301

AND WHEN RECORDED, MAIL TO:

Jeffrey A. Beaumont, Esq.
BEAUMONT TASHJIAN
5008 Chesebro Rd Suite 200
Agoura Hills, CA 91301

Space above for Recorder's Office Only

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
MALIBU COUNTRY ESTATES HOMEOWNERS ASSOCIATION**

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
MALIBU COUNTRY ESTATES HOMEOWNERS ASSOCIATION**

Pursuant to Subdivision (b) of Section 12956.1 of the Government Code, the following notice is printed in 14-point boldface type:

NOTICE

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office. The “Restrictive Covenant Modification” form can be obtained from the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

This Amended and Restated Declaration of Restrictions of Malibu Country Estates Homeowners Association, a California non-profit mutual benefit corporation, is made this 6th day of February, 2024, by the undersigned with reference to the following:

RECITALS

A. A DECLARATION OF RESTRICTIONS (“Original Declaration”) was executed by Century Malibu, Inc., a Delaware corporation, hereinafter called GRANTOR, and recorded on August 28, 1972, as Instrument No. 3553 in the Official Records of Los Angeles County, for the real property situated in the county of Los Angeles, State of California, described as follows:

All Lots contained in Tract No. 30134, as per map thereof recorded in the office of the County Recorder of the County of Los Angeles, on 8-25-72, in Book 820, Pages 15 to 22, inclusive, of Maps, in the records of said County of Los Angeles, which property has been subdivided into lots as shown on said map for the purpose of sales and conveyance thereof; All references in this Declaration to a “lot,” “Lot,” “lots” or “Lots” shall mean and refer to a lot or lots, as the case may be, contained in Tract No. 30134.

B. A Supplement and Amendment was recorded in the Official Records of Los Angeles County on December 11, 2009 with the instrument No. 20091886609. An Amendment to the Original Declaration was recorded in the Official Records of Los Angeles County on April 30, 2014 as instrument No. 20140448672.

C. All provisions of the Original Declaration and amendments thereto are hereby deleted, canceled, and revoked in their entirety, and the following provisions supersede said Original Declaration and amendments thereto, as amended.

NOW, THEREFORE, this Declaration of Restrictions WITNESSETH:

That for the purpose of designating and creating certain conditions and restrictions upon all of said lots for the benefit of all other lots in said Tract, the following covenants, conditions and restrictions shall apply to said land as well before the execution and delivery to any buyer thereof, of a deed conveying said realty to said buyer, as after said deed shall have been executed and delivered, and shall operate as covenants running with the land, being hereby created as mutual equitable servitudes in favor of each and every lot and portion of said land as against each and every other lot and portion thereof;

Further, the purpose of these restrictions is to insure proper development and use of the Premises, to protect the owner of each Lot against such improper development and use of the surrounding Lots as will depreciate the value of his Lot, to prevent the erection on the Premises of structures built of improper design or materials, to encourage the erection of attractive improvements at appropriate locations, to prevent haphazard and inharmonious improvements, to secure and maintain proper setbacks from

streets and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvement of the Premises in accordance with a general plan.

Each Lot includes a fee simple interest in the Lot; a membership in the Malibu Country Estates Homeowners Association; and any exclusive or nonexclusive easement(s) appurtenant to such Lot as described in the Declaration, the Tract Map, and the deed to the Lot. The fee title to all such elements of the respective Lot shall conclusively be deemed to be conveyed, transferred or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to a Lot.

Any and all lots, or portions of lots, shall be and is expressly made subject to the terms, conditions, covenants, and restrictions following, which shall apply to and be binding upon the parties to such conveyance, their heirs, devisees, legatees, executors, administrators, successors and assigns, to-wit:

1. Said premises shall be used only for the purpose of one-single family private residence per lot, including appurtenant private garage, servants' quarters and other appurtenant outbuildings and improvements and no structure shall be moved from any other place onto said premises. No temporary dwelling, garage, servants' quarters or outbuildings shall be erected on said premises, nor shall any structure be erected or allowed on said premises which is not designed, built, maintained and used exclusively for private residential purposes or for making said premises more convenient for residence thereon. When the construction of any residence or structure is once begun, work thereon shall be prosecuted diligently and must be completed within a reasonable time. No shack, tent or trailer shall at any time be used on said premises as a residence, either temporarily or permanently, except that during the construction of a residence and upon written approval of the trailer to be used, and its proposed location, a trailer may be used on said premises for the purpose of construction efficiency for a period not to exceed eight months, provided the trailer and its use conform to all requirements of the County of Los Angeles.

For purposes of this Section, the phrase "single family private residence" shall mean one or more natural persons related to the other by blood, marriage or adoption, or one or more natural persons not all so related, but who maintain a common household and shall specifically exclude any type of boarding house, half-way house, group home, residential care or treatment facility, or other similar use regardless of whether for profit or not for profit. Notwithstanding the foregoing, nothing shall prevent a resident owner from renting rooms in such owner's home so long as the owner is also residing in the home at the same time, as the owner's principal and primary personal residence.

2. All oil and mineral rights have been reserved by a former owner but with no right of surface entry. No well for the production of, or from which there is produced oil, gas or water, shall be drilled, dug or operated on said premises; nor shall any excavation be made on said premises, unless such excavation is necessary in connection with the erection of an approved structure thereon. No rubbish or debris of any kind or character shall ever be placed or permitted to accumulate upon said premises so as to render said premises unsanitary, unsightly, offensive, or detrimental to any other lot or lots in said Tract, or to the occupants thereof.

3. No building or other structure of any nature whatsoever, nor any addition to any building or other structure, shall be erected, maintained or permitted on said premises or the erection or construction thereof begun thereon until complete Plans and Specifications prepared under the supervision of a registered architect or registered building designer shall have first been approved in writing by the Committee hereinafter provided for. Preliminary Plans must be submitted for approval prior to completion of the Final Plans and it is suggested that in order to avoid unnecessary planning and revision costs, schematic plans may be submitted before Preliminary Plans. Three sets of Final Plans and Specifications for any and all buildings, structures, walls, fences, and any alterations thereof or additions thereto, together with proposed exterior colors to be approved, shall be submitted to said Committee for approval, and all such Final Plans and Specifications shall show in detail the nature, kind, shape, height, material, color scheme and elevation of any such structure, and shall likewise show in detail the lot or building site plan indicating the location of such building or structure and all outbuildings on any building site, and, when specifically requested, the grading plan of the building site to be built upon; said Plans and Specifications shall in every case be complete and detailed, and no structure of any kind shall be erected, maintained or permitted on said premises if the plans, elevations and specifications of such structure have not received the written approval of said Committee or which does not fully comply with such approved Plans, Specifications and Elevations, or which is not located on the building site upon which the same is to be erected according to said Plans and Specifications. One set of any such Plans and Specifications shall be retained by said Committee.

Final Plans submitted for approval, in addition to showing setbacks and other details, shall show the relation of the finished first floor level or floor levels of the house, to the highest point of the front street curb of such lot and shall include a Plot Plan showing contour lines of the existing pad and any proposed changes therein. Such plans shall also show:

- a. The total number of square feet in such house as determined in accordance with Paragraph 8 hereof.
- b. The relation in terms of feet of the maximum roof height of the house, to the highest point of the front street curb of such lot, in accordance with paragraph 10 hereof.
- c. The relation in terms of feet of the garage floor to the finished floor level or levels of the house in accordance with paragraph 10 hereof.

In the event that said Committee fails to approve or disapprove such plans within thirty (30) days after submission of the plans to it, then such approval will be deemed to have been given; PROVIDED, HOWEVER, that all other restrictions and conditions contained in this Declaration of Restrictions, including any Amendments thereto made with the concurrence of all the lot owners, shall remain applicable to such plans and all structures to be erected on the lot or building site to which the plans refer.

If the plans as submitted are approved by the Committee, such approval shall be limited solely to approval of the exterior architectural design of the buildings, walls, fences and other structures to be erected on the premises to which the plans refer. Approval for use on any lot of any plans or specifications shall not be deemed a waiver of

the Committee's right, in its discretion, to disapprove such plans, features or elements, which are subsequently submitted for approval for use on any other lot or lots.

The owner of each respective lot in said Tract No. 30134 has the sole responsibility at all times of determining that all plans and specifications for the structures to be erected on such lot and the erection of all buildings, walls, fences and other structures on such lot conform and comply in all respects with this Declaration of Restrictions and all amendments hereto, with the covenants and recitals in the deed to such lot and with all building codes, rules, orders and regulations of the proper governmental authority, and that the exterior architectural design and color of all structures, when completed, conform with the exterior architectural design and color as approved by the Committee.

The Committee shall have the authority and right to inspect premises under construction for the purpose of determining that all construction complies with the plans, elevations and specifications as approved by it, but shall have no responsibility to take such action. Grantor may from time to time at any reasonable hour, enter and inspect any lot, structure or other property subject to these restrictions for the purpose of determining compliance herewith.

4. The Committee hereinabove referred to shall consist of not less than three (3) members. Any action by said Committee may be taken by a majority thereof, and the members of said Committee may act without a meeting.

5. Roofs shall be covered with clay tile, concrete tile, or such other material and color as may be approved by the Committee, provided, however, that no flat roof shall exceed 20% of the total roof area, and provided further that no composition shingle, asphalt shingle, composition sheet, rock or gravel roof shall be used on any of the roof area except the above-mentioned flat area which shall not exceed 20% of the total roof area. No simulated mansard roof shall be used and any true mansard design shall be covered with metal sheeting or wood shingles, the design, material and treatment of which shall be approved by the Committee. For the purpose of these restrictions, any roof or portion thereof having a pitch flatter than 8 feet horizontally to 1 foot vertically shall be construed to be a flat roof.

No air conditioning unit nor air conditioning vents shall be exposed above the roof of any structure, and air conditioning units and vents, pump equipment and motors for swimming pools, etc., if any, shall be enclosed in a manner in keeping with the architecture of the home structure and shall be soundproofed so as not to be a nuisance to adjacent or nearby homeowners.

Patio walls and roofs shall be of the same design and material as the main part of the house, and the roof thereof shall be subject to the same provisions as above. Roll-back or sliding canvas covers or awnings may be used over patios provided the design and colors are approved by the Committee.

6. All exterior stucco shall be painted.

7. No lot may be subdivided for any reason whatsoever, except that three or more adjacent lots may be combined and the resulting total area divided into a smaller number of lots, with the approval of the County of Los Angeles, provided each resulting lot is larger than any one of the original lots so combined.

8. No residence building shall ever be erected, maintained or permitted on said premises which building contains less than 2,000 square feet of floor area.

In determining the number of square feet contained within any residence building erected or to be erected on said premises, the space contained within covered or uncovered porches, covered or uncovered entries, balconies, garage (whether or not it is an integral part of the residence), covered or uncovered patios, basement or cellar, shall not be considered in computing the square footage contained in any such building. For the purpose of computing the "minimum required floor area", it shall be deemed to include the total floor area of the residence building, measurements to be taken for this purpose from the outer faces of exterior walls.

9. All buildings on lots 1, 2, 5 to 14, inclusive, 16 to 30 inclusive, 35 to 38 inclusive, 41, 45 to 49 inclusive, 57 to 75 inclusive, 79 to 98 inclusive, and 107 shall not exceed one story in height above the finished first floor level.

Buildings on lots 3, 4, 15, 31 to 34 inclusive, 39, 40, 50 to 56 inclusive and 76 to 78 inclusive, shall not exceed two stories in height above the finished first floor level.

Buildings on lots 42 to 44 inclusive, and 99 to 106 inclusive, may have the rear portion of the building two stories in height, provided no portion of the building within the first 34 feet back from the front property line exceeds one story in height above the finished first floor level.

10. The highest point of the roof (chimneys excepted) of buildings on lots 1, 2, 5 to 14 inclusive, 16 to 30 inclusive, 35 to 38 inclusive, 41, 45 to 49 inclusive, 57 to 75 inclusive, 79 to 98 inclusive, and 107 shall not exceed eighteen (18) feet above the control point designated for each respective lot on the schedule hereinafter shown as Schedule 10A.

The highest point of the roof (chimneys excepted) for all buildings on lots 3, 4, 15, 31 to 34 inclusive, 39, 40, 50 to 56 inclusive and 76 to 78 inclusive, shall not exceed twenty eight (28) feet above the control point designated for each respective lot on Schedule 10A.

The highest point of the roof (chimneys excepted) of all portions of buildings limited to one story in height as per Paragraph 9 above on lots 42 to 44 inclusive and 99 to 106 inclusive, shall not exceed eighteen (18) feet above the control point designated for each respective lot on Schedule 10A. That portion of buildings limited to two stories in height on the above lots shall not exceed twenty eight (28) feet above the control point designated for each respective lot on Schedule 10A.

The finished first floor level of any part of any building shall not be more than 3 feet above the control point shown in Schedule 10A.

The finished floor level of any garage shall not be more than eight (8) feet below the height control point for each respective lot as shown in Schedule 10A, and no retaining wall adjacent to and parallel with either side of a driveway shall exceed three (3) feet in height within the front setback area of any lot.

SCHEDULE 10A

The following schedule has been established to set a control point for each lot (which control point represents the height of the approximate center of each lot pad) from which the maximum roof height and the maximum finished first floor level shall be measured. The control point for each lot pad is above or below the highest point of the curb of each respective lot, as follows:

Lot No.	Number feet above or below high point of curb	Lot No.	Number feet above or below high point of curb	Lot No.	Number feet above or below high point of curb	Lot No.	Number feet above or below high point of curb	Lot No.	Number feet above or below high point of curb	Lot No.	Number feet above or below high point of curb
1	-1.6	19	-14.4	37	-3.3	55	+7.0	73	+0.6	91	-3.9
2	+14.2	20	+15.7	38	+3.1	56	+6.1	74	+0.8	92	-1.6
3	+26.7	21	+1.5	39	+24.8	57	+0.5	75	+10.8	93	-0.6
4	+20.1	22	-2.1	40	+22.9	58	+3.4	76	+15.1	94	-0.8
5	-12.9	23	-0.3	41	-0.4	59	+2.2	77	+13.8	95	+2.4
6	-3.2	24	+0.2	42	+2.6	60	+0.3	78	+1.0	96	-0.7
7	-5.0	25	-1.3	43	+0.8	61	+1.0	79	-2.1	97	-0.5
8	-5.1	26	-1.5	44	+0.7	62	+1.2	80	-13.1	98	-14.5
9	-6.6	27	-9.7	45	-14.9	63	+0.8	81	-3.3	99	-3.2
10	-6.0	28	-5.7	46	-5.2	64	+0.4	82	-4.4	100	-4.4
11	-0.6	29	+1.5	47	-2.4	65	+0.9	83	-3.3	101	-2.5
12	-1.9	30	+1.4	48	-0.6	66	+1.8	84	-0.7	102	-6.4
13	-3.9	31	+3.4	49	+0.4	67	+2.2	85	+0.4	103	-7.6
14	-1.2	32	+3.1	50	+4.3	68	+1.7	86	+1.5	104	-2.9
15	+15.2	33	+1.1	51	+4.4	69	+1.3	87	+1.3	105	+0.9
16	+11.2	34	-0.2	52	+8.3	70	+1.4	88	+1.0	106	+4.1
17	+12.4	35	+0.5	53	+3.1	71	-11.6	89	+0.7	107	-2.6
18	+4.7	36	+1.8	54	-6.4	72	-4.5	90	-0.1		

Note:

In the case of a corner lot, the highest point of the curb (from which the above measurement has been made) may be located on the primary or secondary street. In the case of Lot 56, the measurement has been made from the highest point of the curb on Malibu Country Drive.

The above control points for each lot are intended to represent the height of the approximate center of each lot pad as originally graded. If a subsequent certified survey indicates that the approximate center of any of the above lots as originally graded is different from the control point so designated, said control point to be used for the respective lot shall be adjusted to the correct control point.

11. No residence or any part of any residence, garage or any other building or structure, exclusive of walls and fences, shall be placed on any lot nearer than 26 feet from the front of the front curb of said lot; and front, side and rear building setback lines on each lot shall conform in all respects to requirements of the County of Los Angeles, provided that no structure, including a porch, balcony, patio or terrace, but excluding walls and fences, shall extend down or be cantilevered or otherwise constructed over or on any downhill slope beyond the front, side or rear lines of the manufactured pad; and provided further that in the case of corner lots, any driveway entering said lot from the secondary street shall have at least 26 feet of driveway between the curb on said secondary street and the entrance doors to the garage.

The right has been dedicated to the County of Los Angeles to restrict the erection of buildings or other structures within areas designated as "Restricted Use Areas" on portions of lots 12, 13, 30, 31, 88, 89, 90, 91, 92, 93, 94, 100, 101, 102, 103, 104, 105, 106 and 107 on the map of Tract No. 30134.

In addition to the above, no structure, wall or fence in excess of six feet in height shall be constructed on any area of the following lots which area is located more than the number of feet designated below, as measured from the front of the curb of such lot:

Lots 62-64 inclusive - 137 feet

Lots 90-93 inclusive - 137 feet

Lots 94-96 inclusive - 117 feet

IT IS EXPRESSLY UNDERSTOOD, however, that any eave or roof overhang extending beyond the wall of such structure or structures a distance of 48 inches or less shall not be considered a violation of these restrictions. Any garage structure not connected with the residence as an integral part thereof shall be located not nearer than the required setback for the main structure from the FRONT property line of said building site.

12. If driveway curb cut and apron are in place on a given lot, the driveway shall remain at such location, unless a different location is approved by the Committee and the existing curb cut is replaced with curb and sidewalk of design typical of Tract 30134 and using the typical concrete mixture specified below. On other lots, the driveway curb cut and apron may be at such location as may be approved by the Committee and shall be of design typical of Tract 30134 and paved with concrete having a typical formula mixture of two pounds lamp black to each cubic yard of concrete mixture. Driveways between street and garage maybe of black top, concrete having typical lamp black mixture as above, or such other material as may be approved by the Committee.

The following lots shall have reciprocal easements for driveway purposes: lots 2 and 3, lots 4 and 5, lots 15 and 16, lots 39 and 40, and lots 76 and 77. These double driveways shall be improved with paving 20 feet wide. Such driveways may be of blacktop

or concrete provided that, if concrete, mixture shall be two pounds lamp black to each cubic yard of concrete mixture, or such other material as may be approved by the Committee.

Single access strip-type driveways serving Lots 17 and 29 shall be improved with paving 15 feet wide and may be of blacktop or of the typical concrete mixture specified above, or such other material as may be approved by the Committee.

The 15 foot driveway adjacent to Lot 52 is not a part of Tract 30134 and is not intended to serve Lot 52. This driveway will be the access driveway for a future lot to be created to the north of Lot 52.

The fire access roadway between Marie Canyon Road and Forest Gate Circle (as shown on the Final Map for Tract 30134) is not available for parking and must be kept free of parked cars at all times.

13. All walls and fences shall be maintained in good condition and be painted or stained if of wood or iron. If standard plain cement or slumpstone cement blocks are used, said walls shall be constructed of block not over four inches in height and painted. If standard cement blocks are used which are more than four inches in height, the wall shall be covered with stucco and shall be painted. Pattern or custom cement blocks shall not be used unless such blocks are of unusual custom design and unless the size of the blocks, design and wall are specifically approved by the Committee. In front of the front setback line, no wall or fence shall exceed five (5) feet in height above the surface of the ground upon which it is located, nor shall a wall or fence exceed six (6) feet in height to the rear of said front setback line unless said wall or fence is not within the side or rear setback areas. No hedge shall be planted or maintained in front of the front setback line at a greater height than five (5) feet from the ground, nor shall any hedge exceed six (6) feet in height to the rear of said front setback line unless said hedge is not within the side or rear setback lines.

In cases where the side or rear property line of a lot is at the top of the slope adjacent to the pad level of an upper lot, the owner of the lower lot shall not build a wall or fence on the said side or rear property line or on the slope adjacent thereto which wall or fence extends more than three feet above the pad level of the adjacent upper lot unless a written agreement and approval to do so is obtained from the owner of the upper lot and duly recorded.

No tennis court shall be constructed on any lot or combination of lots without the owner thereof having first obtained and recorded the written approval of the owner of every lot in Tract 30134 which is adjacent to such lot or combination of lots.

14. Each owner of a lot in said tract shall not in any way interfere with the established drainage in or over any lot in said Tract. In the event it is necessary to change the established drainage over any lot, adequate provisions for proper drainage shall be made therefor. For the purpose hereof "Established Drainage" is defined as the drainage as the same existed at the time of the overall grading of said Tract, including the landscaping of each lot in said Tract as completed by the undersigned.

Each lot owner shall provide continuous maintenance for all planted slopes within his lot and for all drainage benches, drainage channels and/or slopes to prevent drainage from overflowing onto other property. The owner of each lot shall keep said lot

free and clear of weeds, debris and rubbish and keep the premises neat and in good order. Excepting homes not yet sold by Grantor, upon completion of a residence building, the lot owner shall within ninety (90) days plant and maintain lawns or otherwise landscape the front yard, and in the case of corner lots also the side street yard. The Grantor, its successors or assigns hereby reserves the right, in the event of default in the performance of this covenant, after notice in writing to said lot owner to cure said default and lot owner's failure to do so within thirty days thereafter, to enter upon said lot and remove all weeds, debris and rubbish in accordance with this covenant and the expense thereof shall become due and payable from said lot owner to the Grantor within thirty (30) days after written demand therefor.

15. No aerial or antenna for T.V., radio, ham radio, or any other purpose shall be installed on any lot except as may be installed under thereof and within the attic area of the home erected thereon. Spot or flood lights, if any, used for illumination or for accent lighting of landscaping, etc., shall be directed and/or controlled in such a manner as not to be an annoyance or nuisance to adjacent or nearby homeowners.

16. No sign shall be placed or maintained on any lot prior to, during or after the erection of a residence thereon without the prior written consent of the Grantor, its successors or assigns, or duly authorized agent other than one ordinary 18" x 24" "Open for Inspection", "For Rent", "For Sale" or "Sold" sign of design approved by the Committee; and in the event any sign or signs shall be placed or maintained upon said premises in violation of these restrictions, said Grantor, or its successors or assigns, or duly authorized agent, may and is hereby authorized to enter upon said premises and to remove any and all such unauthorized signs. Nothing contained in these restrictions and conditions shall operate to prohibit the Grantor, its successors, assigns, or its duly authorized agent from maintaining upon any lot or lots in said Tract a real estate Tract Office, together with suitable advertising signs for the purpose of conducting the proper development, sale and management of property in said Tract.

17. No trade, business or commercial activity of any sort shall be carried on upon said premises, nor shall anything be done thereon which may be or become an annoyance or nuisance to adjacent homeowners or a detriment to the neighborhood. No auction or public sale of real or personal property shall be conducted upon said premises, nor shall said premises or any part thereof be sold or offered for sale through an auction or public sale.

18. Any trailer, travel trailer, motor home, truck, boat, or other recreational or commercial vehicle shall not be used as additional living quarters, and shall be parked at all times within the garage of the respective home, except during reasonable loading, waiting, and/or unloading periods.

19. No livestock, dog, cat or other animal breeding, raising or care of a commercial nature shall be permitted. No hogs, sheep, bee hives, goats, cows or horses shall be permitted on said premises. No poultry shall be permitted or maintained on said property.

20. (Assessments) For purposes of this Section 20, the following terms shall apply:

"Assessment" means any Regular, Special, or Special Individual Assessment levied or imposed by the Association against an Owner and his or her Lot in accordance with this Declaration.

"Association" means Malibu Country Estates Homeowners Association, a California non-profit mutual benefit corporation, its successors and assigns.

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

"Common Area" means (i) all real property (including any improvements thereon) owned or to be owned by the Association for the common use and enjoyment of the Owners and (ii) all real property (including the improvements thereon) over which the Association or the Owners own or will own an easement for the maintenance of the area, for the benefit of the Owners.

"Common Expense" means any use of Common Funds authorized by this Declaration, by law, or by the Bylaws, including without limitation, expenditures for the administration, management, operation, insurance, maintenance, improvement, replacement, repair, addition, alteration or reconstruction of all or any portion of Tract No. 30134; any amounts estimated to be reasonably necessary for reserves for anticipated long-term maintenance, repair and replacement of capital improvements (the cost of which would not ordinarily be incurred on an annual basis); taxes paid by the Association; expenditures for the discharge of any lien or encumbrance levied against any Common Area; expenditures in collecting Assessments, including amounts expended to purchase a Lot in connection with the foreclosure of an Assessment lien against such Lot; unpaid Assessments; contingencies; and the service obligations of the Association, including costs for water, sewer, garbage, electrical, communications, gas, and other utilities services incurred by the Association.

"Common Funds" means all funds collected or received by or on behalf of the Association and/or due and payable to the Association, including but not limited to the proceeds from insurance carried or obtained by the Association which are payable to or received by the Association for the benefit of the Owners or otherwise.

"Governing Documents" means and refers to all of the following, collectively: this Declaration and recorded amendments and supplemental declarations, if any; the Tract Map; the Articles of Incorporation; the Bylaws; Rules and Regulations; Architectural Guidelines; and any Resolutions of the Board; all as the same may be lawfully amended or modified from time to time.

"Member" means every person or entity who owns or exercises a Membership in the Association. The Members are the Owners of each of the Lots.

"Membership" refers to the legal relationship and status of being a Member of the Association, and an entitlement to the rights and privileges appurtenant thereto as defined herein and in the Bylaws. Membership rights and privileges may be limited or suspended as provided in the Governing Documents and by applicable law. "Membership" may also refer to the Members collectively.

"Owner" means any person or entity in which title to a Lot is vested as shown by the Official Records of Los Angeles County.

20.1 (Covenant to Pay Assessments) Each Owner, by acceptance of the deed to the Owner's Lot, is deemed to covenant and agree to pay to the Association Regular, Special and Special Individual Assessments levied pursuant to the provisions of this Declaration. Each such Assessment shall be established and collected as hereinafter provided. The Owner may not waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of the Owner's Lot.

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

All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Section may be subject to foreclosure as provided in this Declaration.

20.2 (Purpose of Assessments) The Assessments levied by the Association shall be used exclusively to promote, protect, enhance and maintain the recreation, health, safety and welfare of the residents in Tract No. 30134 and for the improvement, maintenance, replacement, repair and operation of the Common Area and the improvements and personal property in the Common Area that are owned or maintained (or will be owned or maintained) by the Association, as set forth in this Declaration, and to further any other purpose that is for the common benefit of the Owners in their use and enjoyment of Tract No. 30134.

20.3 (Regular Assessments) Not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions) by preparing and distributing to all Association Members a budget satisfying the requirements of the Bylaws and this Declaration. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws.

The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate

Regular Assessment for the next succeeding fiscal year, provided that, except as provided in this Declaration otherwise, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, conducted in accordance with applicable law.

The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (3), an "emergency situation" is defined by applicable law, and includes the following: (i) An extraordinary expense required by an order of a court. (ii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered. (iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget above, provided that, prior to the imposition or collection of an assessment under this subparagraph (3), the Board shall adopt a Resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Resolution shall be distributed to the Members together with the notice of assessment.

20.4 (Mailing Notice of Assessment) The Board of Directors shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association or send by electronic means, if consent has been given by the Owner, notice of any increase or decrease in the amount of the Regular or Special Assessments for the next succeeding fiscal year no less than thirty (30) days nor more than ninety (90) days prior to the increased assessment becoming due.

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

20.6 (Installment Payment of Assessments) The Regular Assessment levied against each Owner and his or her Lot shall be due and payable in advance to the Association in equal monthly installments on the first day of each month. Installments of Regular Assessments shall be delinquent if not paid by the 15th day of the month in which the Assessment is due.

20.7 (Equal Allocation of Assessments) Regular and Special Assessments shall be allocated among, assessed against, and charged to each Owner so that each Lot bears an equal share of the total Assessment.

20.8 (Special Assessments) Subject to the membership approval requirements set forth below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes, among others: (i) if, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors shall levy and collect a Special Assessment, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder; (ii) the Board may levy Special Assessments for capital improvements within Tract No. 30134; (iii) the Board may levy Special Assessments to repay disaster loans or loans obtained for the purpose of repairing facilities or financing litigation; (iv) the Board may levy Special Assessments to fund litigation.

No Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written assent of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address emergency situations.

Special Assessments for purposes described in this Section shall be due as a separate debt of each Owner and a lien against his or her Lot.

20.9 (Special Individual Assessments) In addition to the Special Assessments levied against all Owners as outlined above, the Board of Directors may impose Special Individual Assessments against an Owner, after the Owner has been given the notice and hearing rights to which the Owner is entitled, if any damage or destruction of any portion of Tract No. 30134 maintained by the Association is caused by the willful misconduct or negligent act or omission of any Owner, tenant, or resident, or any invitee, servant, or employee thereof, which causes the Association to incur any costs and expenses to repair, all such costs and expenses incurred in connection therewith shall be assessed and charged solely to and against such Lot as a Special Individual Assessment.

Once a Special Individual Assessment has been levied, notice of such Special Individual Assessment shall be mailed to the affected Owner(s) and shall thereafter be due as a separate debt of the Owner(s) payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment, or within such other time period as the Board may determine.

20.10 (Maintenance of Assessment Funds) All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money

market accounts in a bank or savings and loan association selected by the Board of Directors which has offices located within the State of California. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

20.11 (Collection of Assessments; Enforcement of Liens) If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and may, at the Board's election, bear interest at the rate provided by law, beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to impose a late charge for any delinquent Assessments not exceeding ten percent (10%) of the delinquent assessment or \$10.00, whichever is greater, or such other amount as provided by law.

As more particularly provided by applicable law, the amount of any delinquent Regular Assessment, Special Assessment, Special Individual Assessment, or Emergency Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) shall become a lien upon the Lot of the Owner so assessed when the Association causes to be recorded, in the Office of the County Recorder, a Notice of Delinquent Assessment (or equivalent) executed by the Board or an representative of the Association authorized by the Board. The Association shall record the lien in accordance with and pursuant to applicable statutory law.

After the expiration of the statutory time period, prescribed by applicable law, following the recording of Notice of Delinquent Assessment, the Association may initiate legal action against the Owner personally obligated to pay the delinquent Assessment for a money judgment and/or foreclosure of said lien against the Owner's Lot, or accept a deed in lieu of foreclosure, in a manner consistent with applicable statutory law. Foreclosure by the Association of said lien may be by judicial or non-judicial foreclosure.

20.12 (Right to Lien Lots for Special Individual Assessments) A Special Individual Assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas for which the Owner, or his or her tenants, residents, or invitees were responsible may become a lien against the Lot enforceable by the sale of the Lot pursuant to applicable law. Special Individual Assessments relating to delinquent Assessments shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided herein.

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

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

20.15 (No Offsets) All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Areas; or (iii) any construction or maintenance performed or not performed by the Association shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

21. In the event that the streets and/or sidewalks become Common Area of the Association as defined in Section 20, the Owner shall be fully responsible for maintaining the area up to the sidewalk in a manner that does not cause harm or damage to property or life. Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligent or willful conduct of said Owner, or that Owner's family members, contract purchasers, tenants, residents, or invitees.

22. Violation or breach of any restriction herein contained shall give to Grantor and every owner of property subject to these restrictions the right to enter upon the property upon or as to which said violation or breach exists and to summarily abate and remove, at the expense of the owner or lessee thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages.

The result of every action or omission whereby any restrictions herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an owner, either public or private, shall be applicable against every such result and may be exercised by Grantor or by any owner of property subject to these restrictions.

In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the attorney's fees and court costs of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

The failure of Grantor or any property owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

23. If at any time any of said Paragraphs 1 to 22, inclusive, or any part thereof, shall be adjudged or held to be illegal, or invalid, such illegality or invalidity shall

in no way affect or render illegal or invalid any of the other terms, conditions, covenants, and restrictions of said paragraph, or of any other paragraph or part thereof, but each and all of said other terms, conditions, covenants, and restrictions, notwithstanding said illegality or invalidity, shall be and remain in full force and effect.

Each and all of the conditions herein contained shall in all respects terminate and end and be of no further effect, either legal or equitable, either on said property or any part thereof, or on the parties thereto, their heirs, successors, devisees, executors, administrators or assigns, on or after January 1, of the year 2010 unless prior to said date and effective thereon, a written instrument shall be executed by the record owners of the majority of the lots in said property and duly recorded providing for an extension of these restrictions to a later date. Effective on January 1, 2010, the Declaration shall be extended so that the Declaration shall run with and bind the Association property, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any property subject to the Declaration, his or her respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Supplement and Amendment to Declaration is recorded, after which time the term shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then owners of the lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the covenants and restrictions.

This Declaration, or any provision hereof, may also be modified or amended with the written consent of 100% of the Lots by recordation of the same in the Official Records of Los Angeles County.

Notwithstanding anything herein contained to the contrary, no breach of any of the foregoing conditions or any re-entry by reason of such breach shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said property or any part thereof; but said conditions shall be binding upon and effective against any owner of said property whose title thereto was acquired by foreclosure, trustee's sale, or otherwise.

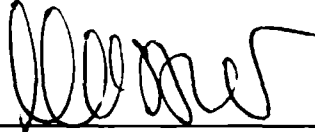
The foregoing conditions and restrictions constitute the minimum conditions and restrictions applying to any lot or lots in said Tract 30134. The right is reserved by the Grantor, in the case of any unsold lot or lots, to add other conditions and restrictions, to increase the requirements thereof as to setback lines, square footage content of buildings and otherwise to increase and supplement but not to diminish, the restrictions on said property.

[signatures to follow]

IN WITNESS WHEREOF, the undersigned executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions this 6th day of February, 2024.

Malibu Country Estates Homeowners
Association

By: _____



Helmut Meissner

, President

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

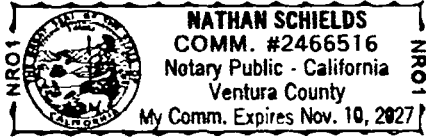
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Los Angeles }
On February 6, 2024 before me, Nathan Schields, notary public
Date Here Insert Name and Title of the Officer
personally appeared Helmut Meissner
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature Nathan Schields
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Amended and restated declaration of covenants, conditions + restrictions
Document Date: February 6, 2024 Number of Pages: 17
Signer(s) Other Than Named Above: - none -

Capacity(ies) Claimed by Signer(s)

Signer's Name: Helmut Meissner Signer's Name: - none -
[] Corporate Officer - Title(s): president [] Corporate Officer - Title(s):
[] Partner - [] Limited [] General [] Partner - [] Limited [] General
[] Individual [] Attorney in Fact [] Individual [] Attorney in Fact
[] Trustee [] Guardian or Conservator [] Trustee [] Guardian or Conservator
[] Other: [] Other:
Signer is Representing: Signer is Representing:

CERTIFICATE

I, the undersigned, the duly elected and acting President of MALIBU COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation, do hereby certify that the foregoing AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS were duly approved and adopted by the membership and upon a petition by the Association pursuant to Civil Code Section 4275, filed as Case No. 23SMCP00557, in the Superior Court of California, for the County of Los Angeles, the Court deemed the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS to have been approved by the necessary percentage of owners of the separate interests in the common interest development to authorize amendment of the declaration. The order of the Superior Court reflecting its grant of said petition and approval of the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is attached hereto as "Exhibit A" and incorporated herein by this reference.

This Certificate is executed under penalty of perjury this 6th day of February, 2024, in the County of Los Angeles, State of California.

**MALIBU COUNTRY ESTATES
HOMEOWNERS ASSOCIATION,**
a California non-profit mutual benefit corporation

By:  _____

Name: Helmut Meissner

Its: President

- see attached California Acknowledgement -

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of Los Angeles }

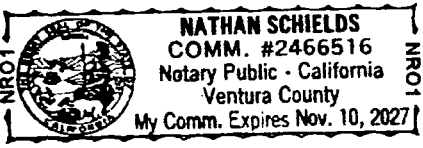
On February 6, 2024 before me, Nathan Schields, notary public
Date Here Insert Name and Title of the Officer

personally appeared Helmut Meissner
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature Nathan Schields
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Certificate

Document Date: February 6, 2024 Number of Pages: 1

Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer(s)

Signer's Name: Helmut Meissner

Corporate Officer - Title(s): president

Partner - Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other:

Signer is Representing:

Signer's Name: none

Corporate Officer - Title(s):

Partner - Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other:

Signer is Representing:

EXHIBIT “A”

<p align="center">SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</p>	<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS: Santa Monica Courthouse 1725 Main Street, Santa Monica, CA 90401</p>	<p align="center">FILED Superior Court of California County of Los Angeles 01/10/2024</p>
<p>PLAINTIFF/PETITIONER: MALIBU COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation</p>	<p>David W. Slayton, Executive Officer / Clerk of Court By: <u> K. Metoyer </u> Deputy</p>
<p>DEFENDANT/RESPONDENT: ALL MEMBERS OF MALIBU COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation, et al.</p>	
<p align="center">CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 23SMCP00557</p>

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Hearing on Petition For Order Reducing Percentage Of Votes Ne...) of 01/10/2024 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Santa Monica, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

✓ Lisa Arpi Tashjian
BEAUMONT TASHJIAN
21650 OXNARD ST #1620
WOODLAND HILLS, CA 91367

David E. Hessami
24624 Vantage Point Terrace
Malibu, CA 90265

Anthony Carsten Kohrs
21361 Pacific Coast Hwy, Ste A
Malibu, CA 90265

David W. Slayton, Executive Officer / Clerk of Court

Dated: 01/10/2024

By: K. Metoyer
Deputy Clerk

CERTIFICATE OF MAILING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

23SMCP00557

January 10, 2024

8:30 AM

**MALIBU COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, A CALIFORNIA NON-PROFIT MUTUAL
BENEFIT CORPORATION vs ALL MEMBERS OF MALIBU
COUNTRY ESTATES HOMEOWNERS ASSOCIATION, A
CALIFORNIA NON-PROFIT MUTUAL BENEFIT
CORPORATION**

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: J. Morgan

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Lisa Arpi Tashjian By: Brittany Ketchum, Michael Attar and Helmut Meissner
(Video)

For Respondent(s): David E. Hessami; Anthony Carsten Kohrs (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Petition For Order Reducing Percentage Of Votes
Necessary To Amend Declaration

The matter is called for hearing.

The Court has read and considered all documents filed hereto regarding the above-captioned
petition and provides counsel with its written Tentative Ruling. Counsel are given the
opportunity to argue. After argument, the Court takes the matter under submission. Later, the
Court amends and adopts its Tentative Ruling as the Final Ruling as follows:

****FINAL RULING****

LEGAL STANDARD

Under Civil Code section 4275, the Court has the discretion to reduce the percentage of the
affirmative votes necessary to authorize an amendment to the declaration of a Common Interest
Development. This section provides in relevant part:

(a) If in order to amend a declaration, the declaration requires members having more than 50
percent of the votes in the association, in a single class voting structure, or members having more
than 50 percent of the votes in more than one class in a voting structure with more than one class,
to vote in favor of the amendment, the association, or any member, may petition the superior

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

23SMCP00557

January 10, 2024

8:30 AM

**MALIBU COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, A CALIFORNIA NON-PROFIT MUTUAL
BENEFIT CORPORATION vs ALL MEMBERS OF MALIBU
COUNTRY ESTATES HOMEOWNERS ASSOCIATION, A
CALIFORNIA NON-PROFIT MUTUAL BENEFIT
CORPORATION**

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: J. Morgan

CSR: None
ERM: None
Deputy Sheriff: None

court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe [a] the effort that has been made to solicit approval of the association members in the manner provided in the declaration, [b] the number of affirmative and negative votes actually received, [c] the number or percentage of affirmative votes required to effect the amendment in accordance with the existing declaration, and [d] other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- (1) The governing documents.
- (2) A complete text of the amendment.
- (3) Copies of any notice and solicitation materials utilized in the solicitation of member approvals.
- (4) A short explanation of the reason for the amendment.
- (5) Any other documentation relevant to the court's determination.

[...]

(c) The court may, but shall not be required to, grant the petition if it finds all of the following:

(1) The petitioner has given not less than 15 days written notice of the court hearing to all members of the association, to any mortgagee of a mortgage or beneficiary of a deed of trust who is entitled to notice under the terms of the declaration, and to the city, county, or city and county in which the common interest development is located that is entitled to notice under the terms of the declaration.

(2) Balloting on the proposed amendment was conducted in accordance with the governing documents, this act, and any other applicable law.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

23SMCP00557

January 10, 2024

8:30 AM

**MALIBU COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, A CALIFORNIA NON-PROFIT MUTUAL
BENEFIT CORPORATION vs ALL MEMBERS OF MALIBU
COUNTRY ESTATES HOMEOWNERS ASSOCIATION, A
CALIFORNIA NON-PROFIT MUTUAL BENEFIT
CORPORATION**

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: J. Morgan

CSR: None
ERM: None
Deputy Sheriff: None

(3) A reasonably diligent effort was made to permit all eligible members to vote on the proposed amendment.

(4) Members having more than 50 percent of the votes, in a single class voting structure, voted in favor of the amendment. In a voting structure with more than one class, where the declaration requires a majority of more than one class to vote in favor of the amendment, members having more than 50 percent of the votes of each class required by the declaration to vote in favor of the amendment voted in favor of the amendment.

(5) The amendment is reasonable.

(6) Granting the petition is not improper for any reason stated in subdivision (e).

[...]

(e) [...] [T]he court shall not be empowered by this section to approve any amendment to the declaration that:

(1) Would change provisions in the declaration requiring the approval of members having more than 50 percent of the votes in more than one class to vote in favor of an amendment, unless members having more than 50 percent of the votes in each affected class approved the amendment.

(2) Would eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant.

(3) Would impair the security interest of a mortgagee of a mortgage or the beneficiary of a deed of trust without the approval of the percentage of the mortgagees and beneficiaries specified in the declaration, if the declaration requires the approval of a specified percentage of the mortgagees and beneficiaries.

ANALYSIS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

23SMCP00557

January 10, 2024

8:30 AM

**MALIBU COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, A CALIFORNIA NON-PROFIT MUTUAL
BENEFIT CORPORATION vs ALL MEMBERS OF MALIBU
COUNTRY ESTATES HOMEOWNERS ASSOCIATION, A
CALIFORNIA NON-PROFIT MUTUAL BENEFIT
CORPORATION**

Judge: Honorable Mark A. Young

CSR: None

Judicial Assistant: K. Metoyer

ERM: None

Courtroom Assistant: J. Morgan

Deputy Sheriff: None

Petitioner Malibu Country Estates Homeowners' Association ("Petitioner" or "HOA") moves the Court for an order reducing the percentage of votes necessary to amend its declaration under Civil Code section 4275. The Petition describes the HOA as composed of owners of single-family residences within a community development project, containing one hundred and seven (107) lots (the "Units") within the HOA jurisdiction. (Pet. ¶¶ 3-4.) Respondents are the individual owner-members of the Association that own units within the HOA's jurisdiction. (¶ 5.) Reviewing the Petition, the Petitioner meets the statutory requirements of section 4275.

Procedural Requirements of the Petition

The Petition provides the procedurally required attachments. The HOA is subject to certain governing documents, including bylaws and CC&Rs. (Pet. ¶ 6, Ex. A.) Importantly to this petition, pursuant to Section 21 of the CC&Rs, one hundred percent (100%) of the members must vote "for" an amendment to the CC&Rs. (¶ 7.) The HOA sought to amend the Governing Documents with the Proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Proposed Amendments"). (Pet., Ex. B.) The HOA provides the notices and solicitation materials used to garner approval of the Proposed Amendments (Id., Exs. C-E) as well as the balloting materials used (Exs. F-G).

The Petition describes the reasoning behind the Proposed Amendments, which reflect the HOA community's desire to grow and convert the HOA Jurisdiction into a gated community (the "Project"). Currently, HOA expenses are minimal—usually between approximately \$10,000 and \$15,000 per year. (Pet. ¶ 25.) To fund these expenses, the HOA makes an annual assessment of \$250 per year, per Unit. (Id.) The Project would increase the annual HOA costs, as the HOA would have to take over the streets as common property of the HOA. (Id.) The current CC&Rs do not contain provisions which allow for the effective collection of assessments. (Id.) The Proposed Amendments seek to clarify and confirm that all homeowners are members of the Association and are obligated to contribute to their share of the assessments as determined by the Governing Documents. (¶ 27.) The Amendments also seek to remove references to the original developer, as it no longer owns any Units. (¶ 28.) Additionally, the Amendments would delete a reference to wood shingles and shakes as roof coverings, following the Malibu Municipal Code. (¶ 29.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

23SMCP00557

January 10, 2024

8:30 AM

**MALIBU COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, A CALIFORNIA NON-PROFIT MUTUAL
BENEFIT CORPORATION vs ALL MEMBERS OF MALIBU
COUNTRY ESTATES HOMEOWNERS ASSOCIATION, A
CALIFORNIA NON-PROFIT MUTUAL BENEFIT
CORPORATION**

Judge: Honorable Mark A. Young

CSR: None

Judicial Assistant: K. Metoyer

ERM: None

Courtroom Assistant: J. Morgan

Deputy Sheriff: None

The Amendments to section 20 are the “main reason” for amending the CC&Rs. (¶ 30.) Critically, it provides rules for assessments and their collection, including the Association’s right to lien. (Id.) Section 21 has been inserted to avoid the Association’s liability for members’ negligence such as if a member’s failure to properly maintain a tree causes harm or damage to users of the streets in the event the streets become the Association’s common property. (¶ 31.) The Court also notes amendments to section 23, which provides:

Effective on Jan. 1, 2010, the Declaration shall be extended so that the Declaration shall run with and bind the Association property, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any property subject to the Declaration, his or her respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Supplement and Amendment to Declaration is recorded, after which time the term shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then owners of the lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the covenants and restrictions.

(Id., Ex. B.)

The Petition shows the efforts made to solicit approval of the Proposed Amendments. (See Pet. ¶¶ 13-18.) The Board undertook an analysis of the pros and cons of the Project and presented its analysis to all members at a duly noticed Special Members Meeting held on October 22, 2022. (Pet. ¶ 24.) The HOA also conducted a formal straw poll for the purpose of determining the membership’s level of support for the Project. (¶¶ 24-25.) At present, there is only one class of voting membership consisting of the members of the HOA. (¶ 10, see Meissner Decl., ¶ 3) From the straw poll, eighty (80) members voted in favor of the Project, while fifteen members voted against the Project, and twelve (12) members did not participate in the vote. (¶ 26, Ex. G.) Further, pursuant to formal balloting, out of one hundred and seven (107) total members, ninety-eight (98) ballots were submitted, and the results of the voting were as follows: a. Eighty-one (81) members voted in favor of the Proposed Amendments; b. Seventeen (17) members voted against the Proposed Amendments; and c. Nine (9) ballots were unreturned. Thus, 75% of the total members approved the Proposed Amendments. Of course, this falls short of the 100% required under the current CC&Rs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

23SMCP00557

January 10, 2024

8:30 AM

**MALIBU COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, A CALIFORNIA NON-PROFIT MUTUAL
BENEFIT CORPORATION vs ALL MEMBERS OF MALIBU
COUNTRY ESTATES HOMEOWNERS ASSOCIATION, A
CALIFORNIA NON-PROFIT MUTUAL BENEFIT
CORPORATION**

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: J. Morgan

CSR: None
ERM: None
Deputy Sheriff: None

The above record shows that balloting on the proposed amendment was conducted in accordance with the governing documents and applicable laws. It demonstrates that the HOA Board conducted a reasonably diligent effort to permit all eligible members to vote on the proposed amendment. Further, from that voting, a clear supermajority of the membership voted in favor of adopting the Proposed Amendments. Moreover, the record does not show that the proposed amendments would violate subsection (e)'s forbearances. Declarant no longer owns any separate interests in the Project. As such, no special rights, preferences, or privileges belonging to the Declarant have been altered by the Proposed Amendments. (Pet. ¶ 34.) The Association only has one class of membership, and thus Civil Code section 4275(e)(1) could not apply to this petition. (¶ 35.) Further, the terms of the declaration do not show that any mortgagee, the City of Malibu, or the County of Los Angeles would be entitled to notice of the instant proceedings.

Reasonableness

Respondents Cynthia Kohrs, Sue Parker Frailey, Glen Frailey, Mark Kunerth, and David E. Hessami oppose the Petition. Opposing respondents warn that they are strongly opposed to changing the existing CC&Rs, especially giving power to the HOA to assess and put liens on their property. They challenge the reasonableness of these terms. Further, they argue that the express purpose of this procedure was to address voter apathy, which is not shown here.

Voter apathy does not need to be shown per the plain language of the statute. “ ‘Viewed objectively, the purpose of ... [section 4275] is to give a property owners' association the ability to amend its governing documents when, because of voter apathy or other reasons, important amendments cannot be approved by the normal procedures authorized by the declaration. [Citation.] In essence, it provides the association with a safety valve for those situations where the need for a supermajority vote would hamstring the association.’ ” (Fourth La Costa Condo. Owners Assn. v. Seith, (2008) 159 Cal. App. 4th 563, 570, emphasis added.) While voter apathy may be a purpose of the statute, the statute flexibly allows for “other reasons” and “does not include voter apathy among the list of elements that must be established.” (Orchard Est. Homes, Inc. v. Orchard Homeowner All., (2019) 32 Cal. App. 5th 471, 475-476.)

As the party petitioning for relief from a supermajority vote requirement, the HOA has the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

23SMCP00557

January 10, 2024

**MALIBU COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, A CALIFORNIA NON-PROFIT MUTUAL
BENEFIT CORPORATION vs ALL MEMBERS OF MALIBU
COUNTRY ESTATES HOMEOWNERS ASSOCIATION, A
CALIFORNIA NON-PROFIT MUTUAL BENEFIT
CORPORATION**

8:30 AM

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: J. Morgan

CSR: None
ERM: None
Deputy Sheriff: None

burden of proving that the amendments are reasonable. (Fourth, supra, 159 Cal.App.4th at 577.) “The term ‘reasonable’ in the context of use restrictions has been variously defined as ‘not arbitrary or capricious’ [Citations], ‘rationally related to the protection, preservation or proper operation of the property and the purposes of the Association as set forth in its governing instruments,’ and ‘fair and nondiscriminatory.’ [Citations.]” (Id.)

Here, the HOA shows that the proposed amendments are reasonable under this standard. Generally, as noted above, the disputed amendments provide for general and special assessments which are required to fund the Project, as well as mechanisms for enforcing the assessments. The Project itself is rationally related to the preservation and operation of the HOA’s property and furthers the purpose of the HOA. These are not arbitrary and capricious assessments, but rationally related to the operation of the HOA. The amendments set out objective, limited and reasonable terms for regular, special and emergency assessments. For instance, the proposed assessments “shall be used exclusively to promote, protect, enhance and maintain the recreation, health, safety and welfare of the residents... improvement, maintenance, replacement, repair and operation of the Common Area... and to further any other purpose that is for the common benefit of the Owners...” (Proposed Amendments, § 20.2.) There are express guidelines, terms and limitations to the general and special assessments, as well as the requisite due process for individualized assessments. (Id., §§, 20.3 – 20.12.) The CC&Rs also provide rational terms and limitations for liabilities. (§§ 20.13-20.15, 21.)

Respondents argue that these terms would impose significant financial ramifications. Respondents observe that HOA dues are currently \$250 per year (approx. \$20.83 per month), and that the proposed amendments will result in an increase to approximately \$350.00 per month, and an initial special assessment of \$1785.00 per homeowner. Respondents would find it unfair or unreasonable for the HOA to impose such assessments for “any reason.” However, as noted, there are express reasons and procedures for the assessments. Thus, the HOA cannot impose assessments for an arbitrary reason, but only the reasons set forth in the CC&Rs. Further, it is probable that converting MCE to a gated community would lead to dramatic increases in monthly assessments. However, such an increase in the assessments would not render the amendments automatically unreasonable, arbitrary or capricious. Even if \$350.00 per month could be considered expensive, the assessments would still be rationally related to the purpose of the HOA and the preservation/operation of the HOA property. Additionally, the placement of

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

23SMCP00557

January 10, 2024

**MALIBU COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, A CALIFORNIA NON-PROFIT MUTUAL
BENEFIT CORPORATION vs ALL MEMBERS OF MALIBU
COUNTRY ESTATES HOMEOWNERS ASSOCIATION, A
CALIFORNIA NON-PROFIT MUTUAL BENEFIT
CORPORATION**

8:30 AM

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: J. Morgan

CSR: None
ERM: None
Deputy Sheriff: None

liens or other enforcement mechanisms would be reasonable here. The HOA needs a meaningful ability to raise funds, which would necessarily include enforcement mechanisms for assessments.

The only term that concerns the Court are the edits to section 23. Respondents argue that the current CC&Rs expire by default unless a majority of Owners sign an extension, and that the Amendments would automatically extend after the initial 30-year term for additional 10-year extension terms unless a majority of Owners sign and record a termination. At argument, Petitioner directed the Court to the December 11, 2009, amendments that had incorporated these changes to the original 1972 CC&Rs. (Pet., Exh. A.)

For these reasons, the Court orders the petition GRANTED. The Proposed Amendments are hereby deemed approved by the Court and shall be effective upon: (1) this Court's order; (2) recordation of the Amended CC&Rs (attaching this order) with the County Recorder's Office; and (3) distribution of the recorded CC&Rs and this Order to all HOA members.

****END OF FINAL RULING****

Clerk to give notice.

Certificate of Mailing is attached.

1 **BEAUMONT TASHJIAN**
2 Lisa A. Tashjian, Bar No. 187738
3 Tara Radley, Bar No. 273350
4 Brittany A. Ketchum, Bar No. 287123
5 5008 Chesebro Rd Suite 200
6 Agoura Hills, CA 91301
7 Telephone: (818) 884-9998
8 Facsimile: (818) 884-1087
9 BKetchum@hoaattorneys.com

10 Attorneys for Petitioner, Malibu Country Estates
11 Homeowners Association

FILED
Superior Court of California
County of Los Angeles

01/10/2024

David W. Stanton, Executive Officer / Clerk of Court

By: K. Metoyer Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 IN RE THE MATTER OF:

15 MALIBU COUNTRY ESTATES
16 HOMEOWNERS ASSOCIATION, a California
17 non-profit mutual benefit corporation,

18 Petitioner,

19 vs.

20 ALL MEMBERS OF MALIBU COUNTRY
21 ESTATES HOMEOWNERS ASSOCIATION,
22 a California non-profit mutual benefit
23 corporation, and DOES 1 through 50,
24 inclusive,

25 Respondents.

CASE NO.: 23SMCP00557

Dept. M

**ORDER AFTER HEARING ON PETITION
TO AMEND DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS**

Date: January 10, 2024

Time: 8:30 a.m.

Dept.: M

[PURSUANT TO CIVIL CODE § 4275]


26 TO THE INTERESTED PARTIES:

27 The Petition to Amend the CC&Rs of Malibu Country Estates Homeowners
28 Association (“Association” or “Petitioner”) came for hearing on January 10, 2024, at 8:30 a.m.
in Department “M” of the above above-entitled court located at 1725 Main Street, Santa
Monica, CA 90401 before the Honorable Judge Mark A. Young, Judge Presiding. Brittany
A. Ketchum, Esq. and Michael Attar, Esq. of Beaumont Tashjian appeared for the Petitioner
and Anthony Kohrs and David Hessami appeared on behalf of Respondents.

1 After considering the Petition and the Court's file and hearing argument, the Court
2 GRANTED the Association's Petition.

3 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Petitioner
4 complied with the requirements under Civil Code Section 4275. The CC&Rs are hereby
5 deemed approved by the Court and shall be effective upon: 1) this Court's order; 2)
6 recordation of the CC&Rs, attaching this Order, with the Los Angeles County Recorder's
7 Office; and 3) distribution of the recorded CC&Rs and this Order to all Members.
8

9
10 DATED: 01/10/2024

11 
12 _____
13 JUDGE OF THE SUPERIOR COURT
14 Mark A. Young
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Malibu Country Estates Homeowners Association

P.O. Box 831

Malibu, CA 90265

president@mcehoa.com