


MARY LOUISE NICHOLSON
COUNTY CLERK

**AMENDMENT TO DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR MONTRACHET**

This Amendment to Declaration of Covenants, Restrictions and Easements for Montrachet (this "Amendment") is executed to be effective upon recording in the Official Public Records of Tarrant County, Texas.

I.

RECITALS

1.1 This Amendment is made pursuant to the Declaration of Covenants, Restrictions and Easements for Montrachet filed of record in the Official Public Records of Tarrant County, Texas on April 23, 2020, under Instrument No. D220092448 (the "Declaration").

1.2 This Amendment replaces an exhibit in the Declaration.

II.

AMENDMENTS AND ACKNOWLEDGMENTS

2.1 EXHIBIT D-3 on Page 59 of the Declaration regarding ASSESSMENT PAYMENT PLAN is deleted in its entirety and replaced with revised EXHIBIT D-3 as set forth in the attached POLICY FOR COLLECTING ASSESSMENTS AND ALTERNATIVE PAYMENT PLAN.

2.2 Except as otherwise expressly provided in this Amendment, the Declaration is hereby ratified and shall remain in full force and effect.

MONTSERRAT HILLS, LLC,
a Texas limited liability company

By: 

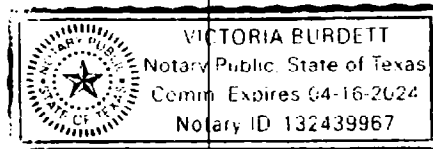
Donnie Siratt

Title: Member Manager for Montserrat
Properties, LLC as Class B Manager
For Montserrat Hills, LLC

THE STATE OF TEXAS

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COUNTY OF TARRANT



This instrument was acknowledged before me on the 5th day of January, 2023, by Donnie Siratt, the Member Manager of Montserrat Properties, LLC, a Texas limited liability company, as Class B Manager for Montserrat Hills, LLC, a Texas limited liability company, on behalf of such limited liability company.

VC

 Notary Public, State of Texas

EXHIBIT D-3

MONTRACHET HOMEOWNERS ASSOCIATION, INC.

POLICY FOR COLLECTING ASSESSMENTS AND ALTERNATIVE PAYMENT PLAN

The policies and procedures detailed herein for collecting Assessments (the "**Policy**") has been adopted by and shall be implemented on behalf of the Board of Directors (the "**Board**") by its managing agent (the "**Management Company**") as agent for the Montrachet Homeowners Association, Inc. (the "**Association**"). This Policy amends, supersedes and replaces the Assessment Payment Plan Guideline identified in Exhibit D-3 of the Declaration of Covenants, Restrictions and Easements and Easements for Montrachet, recorded or to be recorded in the Real Property Records, Tarrant County, Texas (the "**Declaration**").

Background. Pursuant to Article V of the Declaration, the Annual Assessments is due annually; provided however, the Board may allow the Annual Assessment to be paid quarterly by adopting a policy for such a payment plan. Owners that choose not to pay the Annual Assessment in one lump sum, may choose to pay the Annual Assessments advance on the first day of each calendar quarter as further described herein below. Any Owner that has not paid the Annual Assessment by the Annual Assessment Due Date, shall be automatically deemed to have elected to pay the Annual Assessment in accordance with the terms of this Policy.

Obligation to Pay Assessments. Membership in the Association is mandatory pursuant to the terms and conditions of the Declaration. A property Owner is legally obligated to pay the Assessments to the Association even if the Association's facilities or amenities are not used by the property Owner. The property Owner may not withhold assessment payments even if the association is not providing maintenance or other services mandated by the Association's governing documents.

Due Dates. The Annual Assessment is due on January 31 (the "**Annual Assessment Due Date**") and any other Assessment provided for in the Declaration or other charges of the Association are due as provided in the Declaration or by written notice of the Association. Pursuant to this Policy, the Annual Assessment and any Special Assessment, if applicable, may be paid in four equal quarterly installments due on the 1st day of each quarter of the calendar year (such dates are January 1st, April 1st, July 1st, October 1st) and are delinquent if not paid by the last day of the month within which they are due (the "**Default Date**").

Invoices. The Association may, but shall not be required to, invoice a property Owner as a condition to an Owner's obligation to pay Assessment or other charges of the Association. As a matter of course, Assessments are invoiced by statements. ***Non-receipt of an invoice (statement) shall in no way relieve the property Owner of the obligation to pay the amount due by the due date.*** Property Owners who do not receive their invoice (statement) are responsible for contacting the Management Company prior to the due date to request a

replacement. Property Owners are responsible for notifying the Management Company of their mailing address at the time of acquiring property Ownership and any subsequent mailing address change thereafter. The Association may establish a lockbox for the receipt of Assessment payments. Payments made to the lockbox are deposited without review; any communications or notices enclosed or noted on any check or any attempt to effectuate a restrictive endorsement are not effective for such purposes.

Written Notice of Default. Subsequent to an Owner becoming delinquent, the Association may, but is not required to, send a reminder to pay letter. In any event, prior to referring the delinquent account to the Association's legal counsel for collection, the Association will send written notice of the Default to the Owner via certified mail (the "**Default Notice**"). The Default Notice shall: (i) detail each delinquent amount and the total amount owed; (ii) describe the options the Owner has to avoid having the account referred to the Association's legal counsel, including the availability of a payment plan, and (iii) provide the Owner a period of at least forty-five (45) days to cure the Default before further collection action is taken.

Late Payment Charges and Collection Fees.

Late Charges. In the event any Assessment, or any portion thereof, is not paid in full by the Default Date, late charges in an amount up to \$25.00 shall be assessed against the Owner's account each month and every month until the assessment is paid in full, and the past due amount could incur interest at a rate of 18% as provided in the Declaration. Such late charge, as and when levied, is secured by the Assessment Lien described in the Declaration and will be subject to recovery in the manner provided herein for assessments. The Board may, in its sole discretion, waive the collection of any late charge; provided, however, that the waiver of any late charge shall not constitute a waiver of the Board's right to collect any late charges or any other charges in the future.

Collection Fees. In the event any Assessment, or any portion thereof, is not paid in full by the Default Date, collection fees shall be assessed against the Owner's account each month and every month until the assessment is paid in full. Collection fees are charges that may be charged to the Association by the Management Company for the collection of delinquent accounts and may not be waived by the Board without the consent of the Management Company. Such collection fee, as and when levied, is secured by the continuing lien for the Assessment described in the Declaration (the "**Assessment Lien**") and will be subject to recovery in the manner provided herein for assessments. The Management Company may and probably will have additional fees related to collection efforts performed on a delinquent account which may include but, are not limited to costs for Collection Attorneys as hereafter described, reminder letter fees and payment plan set up and monitoring fees and any fees incurred by the Association in the event of a bankruptcy of an Owner. These fees shall be assessed against the Owner's account. Such collection fees, as and when levied, is secured by the Assessment Lien described in the Declaration and will be subject to recovery in the manner provided herein for assessments. Payment of collection fees may be subject to further guidelines or restrictions as they may be set forth in the management contract between the Association and Management Company.

Return Payment Charges. A non-negotiable fee equal to the amount of charge levied by the Bank to the Association will be assessed to the property Owner for any payment processed that is not honored by a bank or financial institution for any reason including but not limited to insufficient funds notwithstanding, the minimum such charge shall be \$25.00. Such return payment charge shall be due and payable immediately upon demand. Any applicable late

payment charges, which would have been assessed if the payment had not been made, may also be applied to the property Owner's account. The payment of the outstanding account balance may be required to be paid with a money order or cashier's check. Personal checks will not be accepted to satisfy an outstanding account balance when an insufficient fund check makes up a portion of the balance.

Referral of Delinquent Accounts to Lien Services or Collection Attorneys

Collection Attorneys. In the event an account has not been paid in full following forty-five (45) days from the date Default Notice was mailed to the Owner, the Association's agent may refer the account to a collection attorney for collection. All costs incurred by the Association for using the services of a collection attorney or administering the referral and handling of the account to a collection attorney, are deemed costs of collection of the Association. Such costs of collection, when incurred by the Association and added to an Owner's account, are secured by the Assessment Lien described in the Declaration and will be subject to recovery in the manner provided herein for assessments.

Referral of Delinquent Accounts to Attorneys

Remedies and Legal Actions. If an Owner fails to cure the Default within the forty-five (45) day period stated in the Default Notice, the Association may, at its discretion and when it chooses, refer the Default to legal counsel for the Association. Any attorney's fees and related charges incurred by virtue of legal action taken will become part of the Owner's assessment obligation and may be collected as such as provided herein. Upon direction of the Board or the Association's agent, legal counsel for the Association may pursue any and all available legal remedies with regard to the delinquencies referred to it including, but not limited to, the following:

Notice of Lien. If an Owner fails to cure the Default indicated in the Default Notice, upon being requested to do so by the Board and/or Management, counsel may, to the extent permitted by law, prepare and record in the Official Public Records of Tarrant County, a written notice of assessment lien (referred to as the "**Notice of Lien**") against such Owner's lot and the improvements thereon. A copy of the Notice of Lien will be sent to the Owner, together with an additional demand for payment in full of all amounts then outstanding.

Foreclosure. In the event that the Owner fails to cure the Default, the Board may direct legal counsel to pursue, to the extent permitted by law, foreclosure of the lien. In any foreclosure proceedings, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees.

Expedited Foreclosure Pursuant to Rules 735 and 736 of the Texas Rules of Civil Procedure. To the extent permitted by law, the Board may decide to foreclose its lien by exercising its power of sale granted by the Declaration. In such event, counsel may commence expedited foreclosure lawsuit under Rules 735 and 736 of the Texas Rules of Civil Procedure ("**Expedited Foreclosure**"). Upon receipt from the Court of an order authorizing foreclosure, counsel may post the property at the Tarrant County Courthouse for a foreclosure sale. The Association shall have the power to bid on the Owner's lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The Association may institute, a personal judgment suit against the former Owner for any deficiency resulting from the Association's foreclosure of its assessment lien.

Judicial Foreclosure. To the extent permitted by law, the Association may file suit for judicial foreclosure ("**Judicial Foreclosure**") of the Assessment Lien, which suit may also seek a personal money judgment. Upon receipt from the Court of an order foreclosing the Association's Assessment Lien against the lot, the sheriff or constable may post the lot and improvements thereon for sheriff's sale. The Association shall have the power to bid on the Owner's lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

Lienholder Notification. In pursuing Expedited Foreclosure or Judicial Foreclosure, the Association shall provide the 61-day notice letter to inferior lienholders pursuant to Section 209.0091 of the Texas Property Code.

Lawsuit for Money Judgment. The Association may file suit for a money judgment in any court of competent jurisdiction.

Bankruptcy. Upon notification of a petition in bankruptcy, the Association may refer the account to legal counsel.

Rights Not Exclusive. All rights and remedies provided in this Policy and herein above are cumulative and not exclusive of any other rights or remedies that may be available to the Association, whether provided by law, equity, and the Association's governing documents or otherwise. In order to expedite the resolution of a delinquent account, the Board may, at any time, compromise or waive the payment of interest, late charges, handling charges, collection costs other than collection fees, unless approved by the managing agent, legal fees or any other application charge.

Use of Regular Mail / Certified Mail. In the event the Association shall send a Default Notice or demand notice to a property Owner by regular mail, certified or certified, return receipt requested, the Association will use the property address unless the Owner has contacted the Association or its Managing Agent and has provided updated mailing address information. Once the notice(s) have been placed in a U.S. mail receptacle or given to a U.S. postal representative, the notice will be considered to have been duly delivered. It is the sole responsibility of the Owner to provide and maintain up to date mailing address information with the Association and/or its Managing Agent.

Waivers. The Association may grant a waiver of any provision herein upon petition in writing by a property Owner showing a personal hardship. Such relief granted a property Owner shall be appropriately documented in the files with the person representing the Association granting the relief and the conditions of the relief. In addition, the Association is hereby authorized to extend the time for the filing of lawsuits and liens, or to otherwise modify the procedures contained herein, as the Association shall determine appropriate under the circumstances. **The Association reserves the right to consider each petition or make its determination regarding referral to an attorney or a third-party collection service on a case by case basis.** Costs owed to the Managing Agent for their efforts in the processing, handling and collections of an account cannot be waived by the Association without the written consent of the Managing Agent.

Nothing specified in this document shall require the Association to take specific actions. The foregoing collection procedures have been adopted by the Association and are effective as of the date recorded. Nothing specified in this document shall require the Association to take

specific actions. The foregoing collection procedure is a directive by the Board of the Association to the Management Company and is intended to be a guide to collection of Assessments owed to the Association. The Board of the Association may at any time revise the foregoing collection procedure and may at any time direct the Management Company to proceed differently with collection of an individual account based on circumstances applicable to that account and advice and guidance from the Management Company or the Association's attorney. ***Failure by the Management Company or the Board of the Association to follow the foregoing collection procedure shall not in any way affect the property Owner's obligation to pay all Assessments when due, along with all applicable late payment charges and costs of collection.*** To obtain any information regarding this collection procedure or to obtain the most up-to-date collection procedure, a property Owner should contact the Management Company.

Ownership Records. All collection notices and communications will be directed to those persons shown by the records of the Association as being the Owner or a lot for which Assessments are due and will be sent to the most recent address of such Owner solely as reflected by the records of the Association. Any notice or communication directed to a person at an address, in both cases reflected by the records of the Association as being the Owner and address for a given lot, will be valid and effective for all purposes pursuant to the Declaration and this Policy until such time as there is actual receipt by the Association of written notification from the Owner of any change in the identity or status of such Owner or its address or both.

Notification of Owner's Representative. Where the interests of an Owner in a lot have been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on notice that its interest in a lot have been and are being handled by a representative or agent, any notice or communication from the Association pursuant to this Policy will be deemed full and effective for all purposes if given to such representative or agent.

Suspension of Builder Approval Status. If an Owner is a builder that has been approved to construct residential homes (Approved Builder Status), the Board may revoke such Approved Builder Status and prohibit any further construction activities within the Montrachet development until all Assessments are paid in full. The Management Company may inform any such Owner of the revoked Approved Builder Status at the request of the Board.

Validity and Enforceability. In the event that any provision herein shall be determined by a court with jurisdiction to be invalid or unenforceable in any respect, such determination shall not affect the validity or enforceability of any other provision, and this Policy shall be enforced as if such provision did not exist. Furthermore, in the event that any provision of this Policy is deemed by a court with jurisdiction to be ambiguous or in contradiction with any law, this Policy and any such provision shall be interpreted in a manner that complies with an interpretation that is consistent with the law. In the event any provision of this Policy conflicts with the Declaration, the Declaration controls.

Amendment. The Declarant, during the Development Period, and thereafter, the Board may amend any provisions of this Policy without consent or joinder of the Members.

Effective Date and Enforcement. The foregoing collection procedure has been adopted by the Association and is effective as of the date recorded.

[signature page to follow]

CERTIFICATION

I, the undersigned, being the Secretary of MONTRACHET HOMEOWNERS ASSOCIATION, INC., do hereby certify that the foregoing is the Collection Policy adopted by the Association's Board of Directors on the 28th day of November, 2022.



Printed Name: Donald Siratt, II

Title: Secretary

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