

MONTECIDO AT PORTOLA HILLS HOMEOWNERS ASSOCIATION

SOLAR PANEL RULES

An applicant wishing to install solar panels on a common area roof must obtain the written approval of the Architectural Committee (“ARC”), as well as obtain a building permit from the appropriate building authority. Applications made to the ARC must be submitted on the appropriate architectural approval form with all required and necessary documentation. The procedures for submittal are set forth in Article IV of the Association’s Declaration of Covenants, Conditions and Restrictions for Montecido.

As part of the process for obtaining approval from the ARC for solar panel installation on a roof, the applicant must provide the following documents:

(1) Contractor Information:

The applicant must provide the name, license number and contact information of the contractor installing the solar equipment. The applicant must submit proof that the contractor currently holds the appropriate contractor license to install solar panels on a roof and has worker’s compensation insurance. This information can be found on the California State License Board website at www.cslb.ca.gov. The applicant’s contractor must also provide a signed original Solar Installer Indemnity Agreement (Exhibit “A”) with the application package.

(2) Insurance:

The applicant must provide evidence of the applicant’s contractor’s current liability insurance providing coverage for the solar panel installation proposed. Applicant shall provide evidence satisfactory to Association that such coverages are not excluded for work or services performed by contractor for common interest developments and/or multi-unit or multi-family dwellings.

(3) Solar Site Survey:

If the applicant wishes to install the solar energy system on a multi-family common area roof shared by more than one homeowner, the applicant must provide a solar survey. The following rules apply:

- a. The solar site survey must show the proposed placement of the solar energy system and must describe the total “usable solar roof area” for the entire roof of the building upon which the solar equipment will be installed (note this should include the entire building – not just the roof area above the applicant’s unit). The survey must be prepared by a licensed contractor or the contractor’s registered salesperson, if the salesperson has the knowledge to be able to determine the usable solar roof area. The survey must also include a determination of the equitable allocation of usable

solar roof area for all homeowners sharing the roof, whether the roof covers homes, garages or carports.

- b. If any prior solar site surveys have been conducted for the particular roof in question, the applicant must provide a copy of any prior survey, along with a copy of their own survey, unless applicant is relying solely on the prior survey. The applicant should also explain why one survey is being used rather than the other(s).
- c. All owners within the building shall have the opportunity to provide comments within ten (10) days of the submittal of the completed application. Applicant must notify all signing owners of the date of submittal using the form attached as Exhibit "B." All owners within the building may contest the findings of the solar site survey by providing their own solar site survey, which likewise must be prepared by a licensed contractor or the contractor's registered salesperson, if the salesperson has the knowledge to be able to determine the usable solar roof area. The applicant is encouraged to discuss any concerns directly with any concerned owners in the building and attempt to reach resolutions prior to submitting the application, when possible. If any dispute cannot be resolved by the owners themselves, the ARC shall be the sole arbitrator in such matters and its decision shall be binding upon the parties. In consideration of this application, the applicant releases the ARC from any and all liability related to its decisions.
- d. The applicant must notify a minimum of one record owner of each unit in the building on which the proposed solar installation will be located. Such notification shall be in writing using the form attached as Exhibit "B" and include a copy of the application, including the solar site survey being relied upon, as well as any other surveys which have been created but are not being relied upon. Each owner receiving the notice and application must sign the Solar Neighbor Awareness Form (Exhibit "B"). In the event that applicant is unable to obtain the signature of any unit owner, all efforts made to provide notice and to obtain the signature should be detailed as an attachment to the application.

(4) Access to Roof:

The applicant must provide detailed information as to how the contractor will obtain access to the roof and describe what areas of the roof will be affected by its access. The applicant shall be responsible for all costs associated with the repair of damage caused by the applicant's contractor.

(5) Maintenance:

To the extent the Association is unable to maintain, repair or replace the roof with the solar energy system intact, the applicant owner shall be responsible for either the removal of the solar energy system when such maintenance, repair or replacement is necessary, or the applicant owner shall be required to provide for the suitable maintenance, repair or replacement of the roof and related components. The applicant must provide detailed

information for the long-term maintenance and cleaning requirements of the solar panels and the affected roof area. Specifically, the applicant must explain how the solar system will be maintained by a licensed contractor in the future and how the solar system will be removed and reinstalled. Maintenance, removal and reattachment will be at the applicant's sole cost and expense, when the common area roof requires maintenance or replacement in the future.

(6) Indemnity:

Applicant must sign and have notarized the enclosed Solar Panel Maintenance and Indemnity Agreement (Exhibit "C"). The Solar Panel Maintenance and Indemnity Agreement will be recorded against the applicant's title and applicant shall provide a copy of the recorded document to any prospective buyers or lenders of applicant's unit.

(7) Drawings:

Applicant must supply an architectural drawing to the ARC that shows the dimensions of the solar panels, the specific location of the panels on the roof of the building, and the precise attachment points on the roof where the panels will be attached.

(8) Construction Requirements:

The application must include detailed information as to the means and methods of installation. This must include the proposed mounting system, any conduits that will be used for electrical cables, entry points into the buildings for all electrical cables, and areas of the building envelope that will be pierced or modified in the construction process, any portion of the common area, other than the roof, that may be impacted or modified as part of the installation or so as to connect the solar panels effectively to the electric meter.

- a. Any solar energy system should be concealed from the street and neighbors' view whenever reasonably possible.
- b. Aluminum trim, if used and visible, should be anodized or otherwise color treated to match or reasonably blend in with any existing structures.
- c. Solar panels should be installed parallel to the plane of the roof materials (flush mounted), when possible.
- d. Solar energy systems must be securely fastened to the roof in accordance with local building codes.
- e. All exterior conduits and/or plumbing lines should be painted in a color scheme consistent with the structure and materials adjacent to the pipes (i.e. pipes on walls should be painted the color of walls while roof pipes should be the color of the roof).

- f. Roof or wall penetrations (such as to attach any solar equipment to the roof) must be flashed, caulked and sealed to prevent water, rodents, insects or other pests from entry.
- g. All solar energy systems must meet or exceed all required fire classifications for such systems.
- h. Installation of solar energy systems on the roof of a structure adds weight to the structure commonly referred to as “dead load.” Solar panels also may impose loads generated by seismic forces. Solar panels must also resist wind forces. This additional weight and load must be accounted for to ensure that the building can safely bear the weight of the solar installation. The applicant must provide written confirmation in a form acceptable to the ARC that the roof area where the applicant intends to install the solar system is structurally capable of supporting the load of the solar system.
- i. Individual components of solar energy systems must comply with the California Electrical Code (CEC) and the manufacturers’ installation instructions. This requirement applies to several system components, including but not limited to the panels, modules, wire, inverters, connectors, and disconnects.
- j. Roof-mounted solar energy systems shall not cause excessive sagging of the roof that results in water ponding. They shall also not block or impede drainage flows to roof drains and scuppers.
- k. Solar panels shall not obstruct or interfere with the function of plumbing vents or mechanical equipment.

Exhibit “A”
Solar Installer Indemnity Agreement

Exhibit “B”
Solar Installation Neighbor Awareness Form

Exhibit “C”
Solar Panel Maintenance and Indemnity Agreement

SOLAR INSTALLER INDEMNITY AGREEMENT

(Civil Code §714.1)

Indemnified Party: Montecido at Portola Hills Homeowners Association (“Association”)

Project: _____ (“Owner”)

Address: _____

Installer: _____ (“Installer”)

License No.: _____

WHEREAS, the Association is responsible for the maintenance and repair of all roofs within the Association;

WHEREAS, Owner desires to install a solar system upon his/her Association-maintained roof; and

WHEREAS, pursuant to *Civil Code* §714.1, the Association requires that any installers of solar panels on Association-maintained roofs execute an indemnity agreement associated with its work.

THEREBY, IT IS HEREBY AGREED:

Installer shall indemnify and defend Association, and Association’s members, directors, officers, agents, management company, attorneys, and employees, and save them harmless from all injuries, damage to property, damage to roofing materials, adjacent roofing materials or any other property over which the Association has maintenance obligations, any damage to common areas, claims, liens, suits, obligations, liabilities, losses, demands, and expense, including attorney’s fees (hereinafter “Claims”) which in any way arise from, are asserted by, relate to, or result from Installer’s installation of solar panels and a solar photovoltaic system on Owner’s roof and/or the work performed, or failed to be performed, for Owner, and any fault, negligence, or wrongdoing of the Installer, its agents, employees, sub-installers, or any other persons acting under the direction or control of Installer in the performance or failure of performance of the work. This indemnity provision applies regardless of any active or negligent act or omission of a party to be indemnified hereunder. This indemnity will not extend the claims arising out of the sole negligence or willful misconduct of Association. If requested by Association, Installer will undertake to provide the defense of any such actions at law or in equity concerning the matters herein above described, or Association may defend such actions at Installer's expense, which Installer shall forthwith pay upon demand and/or Association may offset the same against any amounts then or thereafter to become due to Installer. Association agrees to cooperate with Installer in connection with the defense of any such actions. The obligations described in this Agreement shall not be construed to negate, abridge, or otherwise reduce any other obligation of indemnity which would otherwise exist as to any party or person to be indemnified hereunder. The obligations described in this Agreement shall survive the termination of this Agreement.

Dated: _____

Owner: _____

Dated: _____

Installer: _____

Its: _____

MONTECIDO AT PORTOLA HILLS HOMEOWNERS ASSOCIATION

SOLAR INSTALLATION NEIGHBOR AWARENESS FORM

The undersigned applicant certifies that the attached plans, as well as a solar site survey describing the “usable solar roof area” for the entire roof upon which the solar equipment will be installed, were made available to all owners within the building located at _____ (Address)

Applicant’s Address in Association: _____

Name of Contractor: _____

The Association’s Solar Panel Rules, as well as applicable California law, mandate that the applicant must notify a minimum of one owner of each unit in the building on which the proposed solar installation will be located of the applicant’s intent to install a solar system. All owners within the building may contest the findings of the solar site survey by providing their own solar site survey, which likewise must be prepared by a licensed contractor or the contractor’s registered salesperson, if the salesperson has the knowledge to be able to determine the usable solar roof area. The applicant is encouraged to discuss any concerns directly with any concerned owners in the building and attempt to reach resolutions prior to submitting the application, when possible. If any dispute cannot be resolved by the owners themselves, the Association’s Design Review Committee shall be the sole arbitrator in such matters and its decision shall be binding upon the parties.

Please have at least one owner of each unit within your building complete this section.

I confirm that I am aware that the applicant intends to install a solar system on the roof of the building that houses my unit and that I have been provided with the documents described above. I understand that my signature is not an approval and that I have the right to express my opinions to the Association within 10 days of this application. I also understand that I have the right to obtain and submit my own solar site survey.

Signature: _____ Date: _____

Address: _____

Comments: _____

I confirm that I am aware that the applicant intends to install a solar system on the roof of the building that houses my unit and that I have been provided with the documents described above. I understand that my signature is not an approval and that I have the right to express my opinions to the Association within 10 days of this application. I also understand that I have the right to obtain and submit my own solar site survey.

Signature: _____ Date: _____

Address: _____

Comments: _____

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Address: _____

Comments: _____

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Address: _____

Comments: _____

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Signature: _____ Date: _____

Address: _____

Comments: _____

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Signature: _____ Date: _____

Address: _____

Comments: _____

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Signature: _____ Date: _____

Address: _____

Comments: _____

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Address: _____

Comments: _____

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Address: _____

Comments: _____

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Address: _____

Comments: _____

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Signature: _____ Date: _____

Address: _____

Comments: _____

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Montecido at Portola Hills Homeowners
Association
c/o Iger Wankel & Bonkowski, LLP
23422 Mill Creek Drive, Suite 140
Laguna Hills, CA 92653

(Space above this line for Recorder's use only)

SOLAR PANEL INSTALLATION MAINTENANCE AND INDEMNITY AGREEMENT

THIS SOLAR PANEL MAINTENANCE, AND INDEMNITY AGREEMENT (the "Agreement") effective as of the date of execution set forth below, is made by and between Montecido at Portola Hills Homeowners Association, a California Non-Profit Mutual Benefit Corporation, its successors and assigns, (hereinafter the "Association") and the undersigned record owner, _____ and their successors and assigns, (hereinafter "Owner"). The Association and Owner may be collectively referred to in this Agreement from time to time as the "Parties" and/or individually as a "Party."

RECITALS

A. The Association is a California Non-Profit Mutual Benefit Corporation existing for the purpose of, among other things, administering the Declaration of Covenants, Conditions and Restrictions for Montecido which was recorded on May 25, 1990, as Document No. 90-283785 in the Official Records of Orange County, California, as may have been amended or supplemented from time to time (hereinafter collectively the "Declaration"). Pursuant to the Declaration, the Association has the responsibility to, among other things, maintain, replace and repair, when necessary, the roofs within the Association.

B. Owner is the record owner of the real property within the Association more commonly described as _____ ("Subject Property") and more particularly described as set forth on Exhibit "A."

C. The Subject Property is a condominium and is subject to the terms and conditions of the Declaration. Owner has received a fee interest in the Subject Property, but such fee is, pursuant to the provisions of the Declaration, subject to the power and obligation of the Association to maintain, replace and repair, when necessary, the roofs of the homes within the Association.

D. The real property to be benefited by this Agreement is particularly described herein and in the Declaration, which Declaration is incorporated herein by this reference as though set forth in full. This Agreement has been established by the Parties for the benefit of the Association, Owner, and the Subject Property.

E. Owner wishes to install a solar energy system consisting of solar panels and related solar equipment on the Association maintained roof, which is considered Association "common area" as that term is defined in Article I, Section 1.14 of the Declaration (hereinafter "Common Area"). Said system, solar panels and the related equipment are hereinafter referred to collectively as "Solar Panels." The area in which the Solar Panels are to be attached and affixed to the Association-maintained roof is hereinafter referred to as "Subject Roof Area." The Solar Panel description and Subject Roof Area are set forth more particularly on Exhibit "B." In exchange for the Association's approval of the installation of the Solar Panels, as described herein, Owner hereby agrees to the terms, promises, conditions and duties of this Agreement.

NOW, THEREFORE, the undersigned hereby establish this Agreement under the terms set forth herein, which shall run with the Subject Property and shall be binding upon Owner or any person or entity having or acquiring any right, title or interest to the Subject Property, and shall inure to the benefit and burden of each owner of the Subject Property.

1. Effect of Recitals. The Recitals set forth above are an important and integral part of this Agreement and are hereby incorporated herein and made a part hereof as though fully set forth herein.

2. Solar Panel Installation. Subject to the terms, promises, conditions and duties of this Agreement, the Association hereby permits and assigns to Owner the right to install, at Owner's sole cost and expense, the Solar Panels upon the Subject Roof Area as described in Exhibit "B." In exchange, Owner hereby accepts the obligations as are set forth in this Agreement. However, subject to the restrictions set forth herein, Owner shall only be permitted to maintain the Solar Panels upon the Subject Roof Area until the Owner receives notice from the Association ("Association Notice"), if any, terminating this Agreement and demanding that the Solar Panels be removed, as further described below. In the event of such termination, Owner shall remove the Solar Panels and restore the Subject Roof Area to its original condition, at Owner's sole cost and expense, within thirty (30) calendar days following receipt of the Association's Notice and shall have no recourse against the Association. The Association Notice described herein shall be in writing and shall be personally served or sent by first-class or certified mail and shall be deemed received three (3) calendar days after being deposited in the United States mail, postage prepaid, properly addressed to the Party's last provided address.

3. Conformance of Solar Panels. The Solar Panels must conform to the plans and specifications approved by Association. No improvements other than the Solar Panels including, but not limited to, other roof installations, may be installed, altered and/or removed by Owner, or anyone acting under Owner's direction and/or control, without the Association's prior written approval.

4. Repair and Maintenance. Owner shall have the obligation at all times to maintain and keep in a good state of repair, and under first class condition, the Solar Panels and to pay for any expense and be responsible for any increase in the Association's costs of maintenance of the Subject Roof Area or adjacent building components caused by the existence of and/or placement of the Solar Panels, at the election of the Association. Should any damage or injury to the Subject Roof Area occur as a result of Owner's installation or maintenance of the Solar Panels,

Owner hereby agrees to bear the full cost and expense of any such damage and/or repair. If Owner fails to properly maintain and repair the Solar Panels and appurtenant building components, the Association shall have the right, but not the obligation, to perform such maintenance and repair, and Owner shall, within ten (10) days from the date of demand, reimburse the Association for all expenses associated with such maintenance and repair. Such expenses may be levied as a special assessment pursuant to the Association's governing documents. The maintenance, repair and replacement referred to herein shall result in the Subject Roof Area remaining, at all times, in harmony with other improvements and properties within the Association, and in an aesthetically well-maintained condition. It is the intent of the Parties that Owner shall be responsible for the cost of repair or maintenance of any property resulting from the install, maintenance, repair, removal or existence of the Solar Panels.

5. Insurance. Owner shall procure and maintain general liability insurance on the Subject Property, which includes coverage in connection with the installation, modification, use, maintenance, repair, removal, management, administration and/or existence of the Solar Panels and appurtenant roof materials in an amount of at least Two Million Dollars (\$2,000,000.00). This obligation to maintain insurance may be satisfied by evidence of Owner having procured a conventional liability policy covering the Unit and the Subject Property, and which is acceptable to the Association. Said policy of liability insurance (i) shall state that, with respect to any liability arising out of or relating to the permission and rights granted under this Agreement, such policy is primary and any insurance carried by Association is excess and noncontributing with such primary insurance, (ii) shall contain severability of interest and cross liability clauses, and (iii) shall state that no less than thirty (30) days' written notice shall be given to Association prior to cancellation. Said policy shall also name the Association as an additional insured. Owner shall notify Association in the event of any material change in, or failure to renew, such policy. In the event said Owner fails to secure or maintain any policy of insurance required hereby, Association may, at its sole discretion, and upon thirty (30) days' prior written notice to said Owner, secure such policy of insurance in the name of and for the account of the Owner and in such event, Owner shall reimburse Association upon demand for the cost thereof. Owner shall provide Association with proof of such insurance on an annual basis.

6. Mortgagee Protection. Notwithstanding any provision to this Agreement to be contrary, no amendment or violation of this Agreement shall operate to defeat or render invalid the rights of the beneficiary under any recorded deed of trust, or the mortgagee under any recorded mortgage of any portion of the Subject Property made in good faith and for value, provided that after the foreclosure of any such deed of trust or mortgage, the Subject Property shall remain subject to this Agreement.

7. Limited Effect of Agreement. This Agreement shall not operate to waive any of the other terms or provisions of the Association's governing documents, as that term is defined in *Civil Code* §4150 and the enforcement thereof, for any purpose except as specifically set forth herein. This Agreement has no effect upon Owner's obligation to pay assessments or comply with the Declaration pertaining to the Subject Property and Common Area. Owner, by accepting this Agreement, hereby agrees that the Subject Property remains subject to the lien rights of the Association for all assessments which may be levied against Owner under this Agreement or the Declaration.

8. Indemnity and Waiver. Owner expressly agrees to indemnify and hold harmless the Association, its members, officers, directors, attorneys, agents and employees and/or the Common Area, from any and all injuries, claims, liens, debts, expenses, actions, suits, obligations, liabilities and demands ("Claims") which in any way arise from or relate to this Agreement or its existence, and/or out of Owner's installation and continued placement and existence of the Solar Panels upon the Subject Roof Area, and/or out of Owner's installation, modification, maintenance, repair, operation and/or management of the Solar Panels, and Owner's use thereof, together with reasonable attorneys fees and all costs and expenses in connection therewith. This indemnity provision applies regardless of any active and/or passive negligent act or omission of a party to be indemnified hereunder. This indemnity will not extend to claims arising out of the sole negligence or sole willful misconduct of Association. This indemnification shall extend to Claims occurring after this Agreement is terminated, as well as while it is in force.

Owner, hereby waives any and all claims, liens, causes of action, liabilities, and demands, including the right to claim indemnity or contribution against Association, its directors, officers, managers, employees, attorneys, members, agents and/or Common Area for any acts or omissions arising from or out of this Agreement and/or the installation, relocation, modification, maintenance, repair, operation, use, management and administration of the Solar Panels, and its placement and existence upon the Subject Property.

9. No Prescriptive Rights. In consideration for being permitted to maintain the Solar Panels upon the Subject Property, as described and restricted herein, Owner hereby waives any prescriptive rights, rights of adverse possession, or other rights of easement termination to which they may be entitled by virtue of the Association's permitting the existence of the Solar Panels on the Subject Roof Area. Owner also waives any defenses based upon waiver, laches, estoppel or any applicable statutes of limitations with respect to the Association's right to compel the removal of the Solar Panels from the Subject Property.

10. Attorney's Fees. In the event legal action is instituted to enforce any of the provisions contained in this Agreement, whether sounding in contract or tort, and whether raised in an affirmative claim or as a defense to any claim, the prevailing party in such action or defense of an action shall be entitled to recover from the other party reasonable attorneys fees and costs.

11. Application of Terms of Agreement. This Agreement shall be interpreted in accordance with and governed by the laws of the State of California. No breach of any provision herein can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed a waiver of any other breach of the same or other provisions hereof. This Agreement constitutes the full and entire understanding of the agreement between the Parties hereto, and supersedes all other agreements and understandings, whether written or oral, covering the subject matter hereof. The Parties further agree that any amendments or modifications to this Agreement must be in writing and signed by authorized representatives of both parties and recorded in the Official Records of the County Recorder. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of

which together shall constitute one in the same instrument. Titles and captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, or extend or describe the scope of this Agreement or any provision hereof. No provision of this Agreement is to be interpreted for or against either Party because that Party or legal representative drafted such provision. Whenever the context of this Agreement requires the same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

12. Enforcement. The Association shall have the right of action against Owner to enforce by proceedings at law or in equity, all restrictions, conditions and covenants now or thereafter imposed by the provisions of this Agreement, or any amendment thereto, including the right to prevent the violation of such restrictions, conditions and covenants and the right to recover damages or other Assessments for such violation. Failure by the Association to enforce the provisions herein contained in any certain instance or on any particular occasion shall not be deemed a waiver of such right for any such future breach of the same or any other provision of this Agreement.

13. Covenants to Run with the Land and Termination. Subject to earlier termination as provided herein, the terms promises, conditions and duties of this Agreement shall run with and bind the Subject Property and all those taking an interest in it and shall inure to the benefit of and be enforceable by the Association and Owner, and their heirs, successors and assigns. The Association shall, however, have the right to unilaterally revoke or terminate this Agreement, upon a determination that this Agreement is invalid by a Court of competent jurisdiction or a substitute therefore such as judicial arbitration, or in the event of a material breach of this Agreement. In order to effectuate such termination during the term of this Agreement, the Association must provide to Owner, written notice of such termination, and record with the County Recorder document or documents executed by the Association terminating and canceling this Agreement.

14. Construction. The provisions of this Agreement shall be liberally construed to effectuate its purpose of shifting to Owner the responsibility and financial obligation for the repair, maintenance, insurance, or injury, damage and/or harm of any kind to, any person or property arising out of or related to the Solar Panels and/or appurtenant roof materials at the Subject Property, and/or arising out of or related to this Agreement and its existence. It is also the intent of the Parties that Owner is assuming all liability flowing from this modification to the Subject Property, including any maintenance and repair of the described Solar Panels and appurtenant roof materials from and after the date of this Agreement. This Agreement is made for the purposes set forth herein and Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of any portion of this Agreement, or as to the compliance of any of these provisions with public laws, ordinances, and regulations applicable thereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first written below.

**“MONTECIDO AT PORTOLA HILLS
HOMEOWNERS ASSOCIATION”**

Dated: _____

By: _____

Its: _____, President

Dated: _____

By: _____

Its: _____, Secretary

“OWNER”

Dated: _____

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

EXHIBIT "B"

PROJECT DETAILS