

**By-Laws
Of
MONTALCINO RESIDENTIAL COMMUNITY, INC.**

**ARTICLE 1
NAME, PRINCIPAL OFFICE, DEFINITIONS**

Section 1.1 **Name**. The name of the Association shall be Montalcino Residential Community, Inc. (the "**Association**").

Section 1.2 **Principal Office**. The principal office of the Association in the State of Texas shall be located in either Tarrant or Denton County. The Association may have such other offices, as the Board may determine or as the affairs of the Association may require.

Section 1.3 **Definitions**. Capitalized terms used herein but not defined shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for Montalcino Residential Community recorded in the Official Public Records of Denton County, Texas (the "**Declaration**").

**ARTICLE 2
ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES**

Section 2.1 **Membership**. The Association shall have two classes of membership, as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2.2 **Place of Meeting**. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the board of directors of the Association (the "**Board**") either within the Property or as convenient thereto as possible and practical.

Section 2.3 **Annual Meetings**. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the Association's incorporation date. Meetings shall be of the members entitled to vote or their representatives (the "**Voting Members**"). The date, time and place for subsequent regular Annual Meetings shall be set by the Board. At the Annual Meetings, the quorum for conducting business shall be ten percent (10%) of the total eligible combined Class A and Class B Members in the Association.

Section 2.4 **Special Meetings**. The President may call special meetings. In addition, it shall be the duty of the President or Vice-President to call a special meeting of the Association if so directed by resolution of a majority

of a quorum of the Board or upon a petition signed by Voting Members representing at least fifty-one percent (51%) of the total Class A votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 2.5 **Notice of Meetings.** Except as otherwise provided in the Declaration, written or printed notice stating the place, day, and hour of the meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member, no less than fifteen (15) or more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his or her address as it appears on the records of the Association, with postage prepaid.

Section 2.6 **Waiver of Notice.** Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member shall be deemed waiver of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 2.7 **Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time no less than ten (10) or more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, a quorum shall constitute ten percent (10%) of the total eligible Class A and Class B votes in the Association, and if such number of votes are present, any business which might have been transacted at the meeting originally called may be transacted. If 10% of the total eligible Class A and Class B votes in the Association are not present at any such reconvened meeting, then a majority of the Voting Members who are present at such reconvened meeting, either in person or by alternate, may adjourn the meeting to a time no less than three (3) or more than ten (10) days from the time the reconvened meeting was called. At the second reconvened meeting, a quorum shall constitute a majority of the Board. If a time and place for reconvening any meeting is not fixed by those in

attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after an adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

Section 2.8 **Voting**. The voting rights of the members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein. Except as otherwise specifically provided herein or in the Declaration, the vote allocated to each Lot shall be cast only by the Voting Member.

Section 2.9 **Proxies**. Voting Members may vote by proxy as permitted by the Texas Non-Profit Corporation Act.

Section 2.10 **Majority**. As used in these By-Laws, the term “majority” shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

Section 2.11 **Quorum**. Except as provided in Section 2.7 with respect to adjourned meetings of the Association, the presence in person or by alternate of the Voting Members representing thirty percent (30%) of the total eligible Class A and Class B votes in the Association shall constitute a quorum at all meetings of the Association.

Section 2.12 **Conduct of Meetings**. The President (or, in his absence, any person so designated by the President) shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 2.13 **Action without a Meeting**. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if written consent setting forth the action so taken is signed by a number of Voting Members sufficient to take such action as if all Voting Members were present and voted on such action.

ARTICLE 3 **BOARD: NUMBER, MEETINGS, POWERS**

COMPOSITION AND SELECTION

Section 3.1 **Governing Body: Composition**. The affairs of the Association shall be governed by a Board of directors, each of whom shall have one (1) vote. Except with respect to the initial directors appointed in the Articles of Incorporation, the directors shall be members or spouses of members;

provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of a member which is a corporation or partnership, the person designated in writing to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a director.

Section 3.2 **Number of Directors.** The number of directors in the Association shall be no less than three (3) or more than five (5). The initial Board shall consist of three (3) directors as identified in the Articles of Incorporation. The Board may be increased in size to more than five (5) by majority vote of the then-existing board.

Section 3.3 **Election and Term of Office.**

(a) At the first Annual Meeting following the Development Period, which expires on the earlier to occur of the following: (i) the date that Declarant (1) sells its last Lot, or (2) voluntarily terminates its Class B Member status, the Voting Members shall elect five (5) directors, who shall be Members, to replace the existing three (3) directors appointed by the Declarant. At such election, three (3) directors shall be elected for an initial term of two (2) years, and two (2) directors shall be elected for an initial term of one (1) year. After the expiration of the initial terms, successors shall thereafter be elected each to serve a term of two (2) years.

(b) Each Voting Member shall be entitled to cast all votes attributable to the Lots which it represents with respect to each vacancy to be filled from each slate on which such Voting Member is entitled to vote. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. The directors elected by the Voting Members shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

Section 3.4 **Removal of Directors and Vacancies.** Any director elected by the Voting Members may be removed, with or without cause, by a majority of both the Class A votes and the Class B votes of the Association. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall then and there be elected by the remaining directors.

Any director elected by the Voting Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any Assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor to fill the vacancy for the remainder of the term.

MEETINGS

Section 3.5 **Organizational Meetings**. The first meeting of the Board following each annual meeting of the membership shall be held within sixty (60) days thereafter at such time and place as shall be fixed by the Board.

Section 3.6 **Regular Meetings**. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one (1) such meeting shall be held during each fiscal year. Notice of the time and place of any regular meeting shall be given to each director by one of the following methods: (a) by electronic mail; (b) by personal delivery; (c) written notice by first class mail, postage prepaid; (d) telephone communication, either directly to the director or to a person at the director's office home who would reasonably be expected to communicate such notice promptly to the director; or (e) by fax, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address or electronic mail address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five (5) days before the time set for the meeting. Notices given by electronic mail, personal delivery, telephone, or fax, shall be sent by electronic mail, delivered, telephoned or faxed at least seventy-two (72) hours before the time set for the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of such meeting.

Section 3.7 **Special Meetings**. Special meetings of the Board shall be held when called by written notice signed by the President of the Association or by any two (2) directors. The notice shall specify the time and place of the meeting. The notice shall be given to each director by one of the following methods: (a) by electronic mail; (b) by personal delivery; (c) written notice by first class mail, postage prepaid; (d) telephone communication, either directly to the director or to a person at the director's office home who would reasonably be expected to communicate such notice promptly to the director; or (e) by fax, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address or electronic mail address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five (5) days before the time set for the meeting. Notices given by electronic mail, personal delivery, telephone, or fax, shall be sent by electronic mail, delivered, telephoned or faxed at least seventy-two (72) hours before the time set for the meeting.

Section 3.8 **Waiver of Notice**. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an

approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 3.9 **Quorum of Board**. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time no less than five (5) or more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 3.10 **Compensation**. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total votes of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 3.11 **Conduct of Meetings**. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording therein all resolutions adopted by the Board and all transactions and proceedings occurring at such meetings.

Section 3.12 **Action Without a Formal Meeting**. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a number of directors sufficient to take such action if all directors were present and voted on such action. Directors may provide written consent by means of electronic mail which shall be regarded as signed by the director for purpose of this Article. Prompt notice of the taking of any action by directors without a meeting by less than unanimous written consent shall be given to all directors who did not consent in writing or by electronic mail to the action taken.

POWERS AND DUTIES

Section 3.13 **Powers**. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not directed to be done and exercised exclusively by the Voting Members or the membership generally by the

Declaration, Articles of Incorporation, or these By-Laws.

The Board shall delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

Section 3.14 **Management**. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board by these By-Laws that can properly be delegated. Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

Section 3.15 **Accounts and Reports**. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) financial reports shall be prepared for the Association at least annually containing:

(1) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(2) a statement reflecting all cash receipts and disbursements for the preceding period;

(3) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(4) a balance sheet as of the last day of the preceding period; and

(5) a delinquency report listing all Owners who are delinquent in paying any Assessments at the time of the report and describing the status of any action to collect such Assessments which remain delinquent (any Assessment or installment thereof shall be considered to be delinquent on the fifteenth (15th) day

following the due date unless otherwise determined by the Board);
and

(g) an annual report consisting of at least the following shall be available to all members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year.

Section 3.16 **Borrowing**. The Board shall have the power to borrow money for the purpose of maintenance, repair or restoration of Common Area without the approval of the Voting Members. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Voting Member approval in the same manner provided in the Declaration for Special Assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Section 3.17 **Rights of the Association**. With respect to the Common Area, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Such agreements shall require the consent of a majority of the total number of directors of the Association.

Section 3.18 **Enforcement**. The Board shall have the power to impose reasonable fines (which shall not exceed Five Hundred And No/100 Dollars (\$500.00) per occurrence), which shall constitute a lien upon the Lot of the violating Owner as provided in Article 6, Section 6.5(b) of the Declaration, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty, covenant, restriction or obligation imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted by the Association's Board of Directors. If any occupant, guest or invitee of a Lot violates the Declaration, By-Laws, or a rule or regulation adopted by the Board of Directors of the Association, and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by such occupant, guest or invitee within the time period designated by the Board, the Owner shall pay the fine upon demand from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation duly adopted by the Board of Directors of the Association shall not be a waiver of the right of the Board to do so thereafter.

Section 3.19 **Additional Enforcement Rights**. The Association, acting through the Board, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both or

an action to foreclose the lien against any Lot without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees and expenses actually incurred.

ARTICLE 4 **OFFICERS**

Section 4.1 **Officers**. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 4.2 **Election, Term of Office, and Vacancies**. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Voting Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 4.3 **Removal**. Any officer may be removed by majority vote of the Board whenever, in the Board's judgment, the best interests of the Association shall be served thereby.

Section 4.4 **Powers and Duties**. The officers of the Association shall each have such powers and duties as generally associated with their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget and reports as provided for herein and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 4.5 **Resignation**. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board.

ARTICLE 5

COMMITTEES

Section 5.1 **General**. The Board is authorized to establish committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee established by the Board shall operate in accordance with the terms of the resolution of the Board designating the committee and such rules as are adopted by the Board.

Section 5.2 **Covenants Committee**. The Board may appoint, but shall have no obligation to appoint, a "**Covenants Committee**" consisting of at least three (3) and no more than seven (7) Voting Members, who shall be appointed to serve a term of one (1) year and may, in the discretion of the Board, be appointed for any number of consecutive terms of one (1) year each. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 209.007 of the Texas Property Code, as amended.

ARTICLE 6

MISCELLANEOUS

Section 6.1 **Fiscal Year**. The fiscal year of the Association shall be set by resolution of the Board. In the absence of a resolution, the fiscal year shall be equal to the calendar year.

Section 6.2 **Parliamentary Rules**. The Board, by resolution, may adopt in whole or in part *Robert's Rules of Order* (current edition) to govern the conduct of Association proceedings when not in conflict with Texas law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 6.3 **Conflicts**. If there are conflicts between the provisions of Texas law, the Articles of Incorporation, the Declaration, and/or these By-Laws, then the provisions of Texas law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 6.4 **Books and Records**.

(a) **Inspection by Members and Mortgagees**. The Declaration, By-Laws, Articles of Incorporation, any amendments to the foregoing, the rules and regulations of the Association, the membership register, books of account (not account information for individual Owners), and the minutes of meetings of the members, the Board, and committees shall be made available for inspection and copying by any Owner, or any holder, insurer or

guarantor of a first mortgage on a Lot at any reasonable time during reasonable business hours and for a purpose reasonably related to his or her interest in the Lot at the office of the Association or at such other place within the Property as the Board shall prescribe. Any such request must be in writing and shall state the purpose for which the inspection is requested. The Board may impose a reasonable fee for costs of copying any such information, to include administrative costs involved with the inspection by the Owner, which shall be payable in advance.

(b) **Rules for Inspection.** The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the week when such an inspection may be made; and (3) payment of the costs involved with the inspection and reproducing copies of documents requested.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the reasonable expense of the Association.

Section 6.5 **Notices.** Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a member or Voting Member, at the address which the member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such member or Voting Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the members pursuant to this Section.

Section 6.6 **Amendment.** Except as otherwise specifically provided above and elsewhere in these By-Laws, these By-Laws may be amended only by the affirmative vote or written consent, or combination thereof, of Voting Members representing fifty-one (51%) of the total votes of those members present, in person or by proxy, at a duly convened meeting of the Members of the Association. Notwithstanding the above, the percentage of votes or other approval necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes or other approval required for action to be taken under that clause.

In addition, so long as the Class B membership provided for in Section 5.2(b) of the Declaration exists, Declarant may determine whether any amendment to these By-Laws shall require the prior written approval of HUD or VA.

If an Owner consents to an amendment to these By-Laws, it will be conclusively presumed that such Owner has the authority to so consent and no contrary provision in any mortgage or contract between Owner and a third party will affect the validity of such amendment.