

**DRAFT**  
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# Montesoro Golf and Social Club

## **GOLF MEMBERSHIP POLICIES**

Effective \_\_\_\_\_, 2006

## TABLE OF CONTENTS

	<u>Page</u>
1. GOLF MEMBERSHIP AND USE PRIVILEGES .....	2
1.1 Golf Membership .....	2
1.2 Use Privileges .....	3
1.3 Exercise of Privileges; Immediate Family and Guests: .....	3
2. FINANCIAL OBLIGATIONS OF MEMBERS .....	3
2.1 Membership Fees .....	3
2.2 Delinquencies.....	5
3. TRANSFER, CONVERSION, AND TERMINATION OF GOLF MEMBERSHIPS .....	5
3.1 Transfer of Golf Memberships.....	5
3.2 Termination of Golf Memberships. ....	6
3.3 Repurchase and Reissuance of Golf Memberships.....	7
4. GOOD STANDING; DISCIPLINE.....	9
4.1 Good Standing. ....	9
4.2 Discipline. ....	9
5. MANAGEMENT, OPERATION AND TRANSFER OF CLUB FACILITIES.....	10
5.1 Club Management.....	10
5.2 Nonmember Use. ....	11
5.3 Transfer of Club Facilities. ....	12
6. GENERAL PROVISIONS .....	13
6.1 Notices. ....	13
6.2 Amendment.....	13
6.3 Assumption of Risk.....	14
6.4 No Ownership Interest. ....	14
6.5 Tax Consequences. ....	15
6.6 Suitability Standards. ....	15
6.7 Representations. ....	15

# MONTESORO GOLF AND SOCIAL CLUB

## GOLF MEMBERSHIP POLICIES

### INTRODUCTION

Borrego Investors, LLC, a California limited liability company (“**Club Owner**”), owns the real property and facilities located in Borrego Springs, California, commonly known as “Montesoro Golf and Social Club” and formerly known as “Rams Hill Country Club and Golf Resort” (the “**Club**”). The Club is a “right to use” membership club. It is currently contemplated that the Club will consist of the following (collectively referred to as the “**Club Facilities**”):

**Golf Facilities** to include one 18-hole championship golf course designed by Tom Fazio with related practice facilities, including a driving range and practice putting greens, and supporting grounds and maintenance facilities.

**Clubhouse** consisting of approximately 20,000 square feet, which includes food and beverage facilities, a golf pro shop, restroom facilities, and a parking area.

**Activity Center** consisting of 6 tennis courts, a swimming pool, a fitness/exercise center, and food and beverage facilities.

Club Owner reserves the right to construct and make available the Club Facilities in its sole and absolute discretion; however, Club Owner or any successor shall not be required to construct or develop the Club Facilities in any manner whatsoever.

The Club is located within that certain master planned community commonly known as “Montesoro” (formerly known as “Rams Hill”) (the “**Community**”). The Community consists of existing residences (each an “**Existing Residence**” and collectively the “**Existing Residences**”) and it is contemplated that additional residences will be developed within the Community (each a “**New Residence**” and collectively the “**New Residences**”). Each Existing Residence and New Residence shall be known as a “**Residence**” and collectively known as the “**Residences**.”

The Club will initially have two categories of membership: (i) Amenities Memberships, and (ii) Golf Memberships. Club Owner reserves the right, at its sole discretion, to create additional categories of membership and the right to modify and amend the overall membership program of the Club.

Each “Amenities Member” must own a Residence which is annexed to that certain *Declaration of Covenants, Conditions and Restrictions (The Montesoro Amenities)* (the “**Amenities CC&Rs**”) recorded on \_\_\_\_\_, 2006 in the Official Records of San Diego County as Instrument No. \_\_\_\_\_. A Residence that is annexed into the Amenities CC&Rs shall be known as an “**Amenities Residence**” and collectively known as the “**Amenities Residences**.”

Amenities Members do not have the right to use the Golf Facilities, unless they become “Golf Members” (as defined below). Golf Memberships are issued to eligible Amenities Members

(each a “**Golf Member**” and collectively, the “**Golf Members**”). Golf Members have the right to use the Golf Facilities subject to the terms and conditions of the “Golf Membership Documents” (as defined below).

All Golf Memberships constitute a license to use and enjoy the Golf Facilities, subject to the terms of these Membership Policies for Montesorro Country Club, as they may be amended from time to time in the sole discretion of Club Owner (the “**Membership Policies**”), the terms and conditions of any membership agreement entered into between the Golf Member and Club Owner (the “**Membership Agreement**”), and the Montesorro Country Club Rules and Regulations as they may be amended from time to time in the sole discretion of Club Owner (the “**Club Rules**,” collectively, the “**Golf Membership Documents**”).

The Club is a non-equity club. Golf Members have no ownership, proprietary, or beneficial interest in, or right to control Club Owner or the Club Facilities. Golf Members hold only a license to use the Golf Facilities together with such other persons as Club Owner may authorize from time to time.

Club Owner reserves the right from time to time in its sole discretion to prescribe and modify qualifications and requirements for Golf Membership. Club Owner shall have the power to create additional classes of membership and use categories and to specify the qualifications, privileges, and obligations of such additional memberships.

Club Owner may establish or change limits on the number of memberships to be offered in any class of membership, the privileges available to members, and the membership use categories. No such action by Club Owner shall constitute, or be deemed to constitute, an amendment to these Membership Policies.

Club Owner may waive the eligibility requirements for any class or category of membership; establish and change the eligibility requirements, privileges, obligations and fees of any class or category of membership as they relate to existing and new members; discontinue offering any class or category of membership; and create additional classes and categories of membership with such eligibility requirements, privileges, and obligations as it deems appropriate, in its sole discretion.

## **1. GOLF MEMBERSHIP AND USE PRIVILEGES**

### **1.1 Golf Membership**

Golf Memberships may be issued to eligible Amenities Members upon Club Owner’s invitation and the Amenities Member’s payment of such initial contribution and periodic dues as Club Owner shall establish. The maximum number of Golf Memberships currently permitted to be issued is 375. This is subject to change. The number of Golf Memberships may be increased proportionately with the addition of new golf holes (i.e., 375 additional Golf Memberships per 18 holes or 21 additional Golf Memberships per hole). No other type of membership shall be included in determining whether the total number of permitted Golf Memberships has been reached even if such membership categories can use the Golf Facilities.

## **1.2 Use Privileges**

Golf Membership entitles the Golf Member and the Golf Member's "Immediate Family" (as defined below) to use all of the Golf Facilities, as available, including the golf course without payment of greens fees or practice facility fees (but upon payment of applicable cart and trail fees). In addition, Golf Members and the Golf Member's Immediate Family are entitled to:

- the opportunity to play in the Club's Golf Member related tournaments;
- guest privileges for guest(s) who are accompanied by the Golf Member; provided that the number of guests and use rights of same shall be subject to rules, regulations and charges established and amended from time to time by Club Owner; and
- participate in special promotions, including discounts at the pro shop that may be offered from time to time at the discretion of Club Owner.

Use of the Club Facilities, including the Golf Facilities, shall be subject to the Club Rules (as may be modified from time to time in the sole discretion of Club Owner), payment of the applicable dues, payment of such charges as Club Owner may establish from time to time, and to the other rights reserved to Club Owner herein.

## **1.3 Exercise of Privileges; Immediate Family and Guests:**

Golf Membership permits the Golf Member to extend the use privileges of Golf Membership to his or her "Immediate Family," which is defined as the Golf Member's spouse or significant other (which may not be changed more than once in any twelve (12) month period) and their unmarried children under the age of 24 who are living at home or attending school on a full-time basis.

***Guest Privileges.*** A Golf Member may sponsor guests to use the Golf Facilities in accordance with the Club Rules and the Golf Member's privileges upon payment of applicable guest fees and such other charges as Club Owner may establish. However, a guest, including an Amenities Member that is not a Golf Member acting as a guest of a Golf Member, shall be limited to use of the Golf Facilities no more than five (5) times per calendar year, subject to the Club Rules regulating tee times, dates of use, etc. Club Owner reserves the right to limit the number of guests that Golf Members and their Immediate Family may sponsor and to limit the number of times a particular individual may use the facilities as a guest. Except as Club Owner may otherwise agree, the sponsoring Golf Member shall be responsible for all charges incurred but not paid by a guest.

## **2. FINANCIAL OBLIGATIONS OF MEMBERS**

### **2.1 Membership Fees**

***New Golf Member Initiation Fee.*** Golf Members will pay a New Golf Member Initiation Fee to acquire a Golf Membership in such amount as Club Owner may establish from time to time. New Golf Member Initiation Fees shall be paid as set forth in the Golf Member's

Membership Agreement. New Golf Member Initiation Fees and other amounts paid to Club Owner may be used for any purpose determined appropriate by Club Owner, provided that New Golf Member Initiation Fees shall be held in escrow by Club Owner until the 18 hole golf course is completed.

***Golf Membership Dues.*** In addition to the New Golf Member Initiation Fee, Golf Members must pay monthly dues to Club Owner as provided in their Membership Agreements. Because the Golf Facilities are not complete as of the date hereof, the Golf Membership Dues shall initially be equivalent to Three Hundred Fifty Dollars (\$350.00). The Golf Membership Dues shall be increased by Two Hundred Twenty Five Dollars (\$225.00) over the then existing Golf Membership Dues upon the completion of the 18 hole golf course. Notwithstanding the foregoing, Club Owner has no affirmative obligation to complete the Golf Facilities. In addition to the increases described above, the Golf Membership Dues then being charged may be increased by up to ten percent (10%) per year, in the sole and absolute discretion of Club Owner. In the event the Golf Facilities are expanded, Club Owner shall have the right to increase the Golf Membership Dues in its sole discretion. Any dues increases, whether or not they are significantly greater than any historic percentage increases or dollar amount increases, shall not be deemed to be either an assessment for operating expenses or capital improvements.

***Other Fees.*** Except as Club Owner may otherwise provide, Golf Membership shall be subject to payment of such other fees and charges as Club Owner may establish. Club Owner shall publish a schedule of current fees, dues, and charges, which shall be subject to change from time to time in Club Owner's sole discretion. Fees charged to members may also differ from fees charged to non-members. In addition to such other charges as are specifically authorized in these Membership Policies, such fees and charges may include, without limitation, golf cart rental fees, caddy fees, club and cart storage fees, instruction fees, handicapping charges, fees for failure to cancel reserved tee times or other reservations.

Except as these Membership Policies may otherwise specifically provide, all fees are non-refundable.

***Payment.*** Members shall pay to Club Owner all fees, dues, and charges in such amounts and at such times as Club Owner may establish. Unless Club Owner otherwise specifies, all dues shall be paid on a monthly basis. Club Owner may permit dues to be paid in advance. Members (or their designees) shall be primarily responsible for and shall be billed directly for any fees and personal charges which their Immediate Family and guests incur. Club Owner may, in its discretion, require accounts to be paid through a charge account service with a bank or other financial institution.

Club Owner may permit members and Immediate Family to charge food and beverage charges, golf shop charges, guest fees, equipment rentals, and similar charges to the Golf Member's club account. However, should any Golf Member's account become delinquent, Club Owner reserves the right to suspend or terminate such privileges.

## **2.2 Delinquencies.**

In the event that any Golf Member fails to pay amounts due to Club Owner when due, Club Owner may require the Golf Member to pay the balance of the Golf Membership Dues for such year in full immediately, impose late charges, charge interest on the amount past due until paid at a rate determined by Club Owner (not to exceed 18% per annum on the past due amount), and, subject to the procedures set forth in Section 4, suspend the privileges of the delinquent Golf Member and all the Golf Member's Immediate Family. Club Owner shall be entitled to collect from the delinquent Golf Member all costs and expenses reasonably incurred by Club Owner in attempting to collect the delinquent amounts, including attorneys' fees and court costs, whether or not suit is filed. In addition, Club Owner may publish a list of delinquent Golf Members and the amount outstanding in any communication to the Golf Members and anywhere within the Club Facilities.

## **3. TRANSFER, CONVERSION, AND TERMINATION OF GOLF MEMBERSHIPS**

### **3.1 Transfer of Golf Memberships.**

*General.* Except as specifically provided in these Membership Policies or in the Golf Member's Membership Agreement, Golf Memberships are not transferable except to and by Club Owner and any other attempt to transfer a Golf Membership shall be void and of no effect. A Golf Member may pledge his or her Golf Membership to an institutional lender to secure purchase money financing for such Golf Membership provided the Golf Membership secures no more than the New Golf Member Initiation Fee paid to Club Owner for such Golf Membership. In the event that the lender acquires the Golf Membership pursuant to the remedies provided in its loan documents, the Golf Membership shall be deemed resigned and terminated and the lender shall only be entitled to the right to refund of the New Golf Member Initiation Fee in accordance with these Membership Policies and the Golf Member's Membership Agreement. The lender may not exercise any other privileges of Golf Membership.

*Sale of Member's Property in Community.* Upon transfer of title to a Golf Member's Amenities Residence, the Golf Member's Membership shall be deemed resigned. Upon written notice to Club Owner prior to the transfer of title, a Golf Member who resigns his or her Golf Membership may arrange for the Club to make such Golf Membership available to the new owner of his or her Amenities Residence, without regard to any waiting list for Golf Memberships then in effect. Such option shall be available only if the new Amenities Member of the applicable Amenities Residence applies for a Golf Membership within 60 days after taking title to the terminating Golf Member's Amenities Residence, is approved by Club Owner, and pays to Club Owner the New Golf Member Initiation Fee then being charged for a Golf Membership in full within 10 days after receipt of notice of such approval and executes a new Membership Agreement with Club Owner.

Upon repurchase and reissuance of the Golf Membership to the new Golf Member, the resigning Golf Member shall be entitled to a reimbursement of the New Golf Member Initiation Fee as set forth in Section 3.3 less any outstanding dues, fees and other charges due from the resigning Golf Member. Any dues paid in advance shall be prorated as of the date of such termination.

**Death.** Upon the death of a Golf Member, an Immediate Family member designated by the Golf Member in writing to Club Owner prior to such Golf Member's death (provided he or she is at least 18 years of age), if any, shall have 60 days within which to apply to have the deceased Golf Member's Golf Membership transferred to him or her at no charge subject to the approval procedure established by Club Owner and the payment of all fees, dues, and charges on account of such Golf Membership, provided that such designated Immediate Family member must be an "Owner" (as defined in the Amenities CC&Rs) of the Amenities Residence. If there is no Immediate Family member so designated, the designated Immediate Family member is not approved for Golf Membership by Club Owner, or upon failure of the designated Immediate Family member to apply to have such Golf Membership transferred within such 60-day period, the deceased Golf Member's Golf Membership shall terminate and the Golf Membership shall be placed at the top of any resale waiting list. If the Golf Membership is transferred to a designated Immediate Family member, the designated Immediate Family member shall execute a new Membership Agreement providing that Club Owner shall repay the New Golf Member Initiation Fee the deceased Golf Member would be entitled to receive, as set forth in the deceased Golf Member's Membership Agreement. The right to have the Golf Membership transferred to a designated member of the Golf Member's Immediate Family may be exercised only once per Golf Membership. Notwithstanding anything else in these Membership Policies or the Golf Member's Membership Agreement, a Golf Membership which has been transferred to an Immediate Family member terminates upon the death of the New Golf Member unless earlier terminated or resigned.

A deceased Golf Member's estate shall be responsible for payment of all dues and charges on the Golf Member's account until Club Owner has received written notice of resignation of such Golf Membership or a written request for transfer of such Golf Membership as provided in this paragraph.

**Separation or Divorce.** In the event that a Golf Member is legally separated or divorced, the Golf Membership shall vest in the person entitled to the Golf Membership pursuant to written agreement, divorce decree, or court order. In the event the written agreement, divorce decree, or court order vests the Golf Membership in an individual other than the Golf Member, the Golf Membership shall automatically terminate and the sole right of such individual shall be the right to the refund of the New Golf Member Initiation Fee in accordance with these Membership Policies and the previous holder's Membership Agreement; provided, Club Owner, in its sole and absolute discretion, may invite the new holder of the Golf Membership to submit an application for Golf Membership and, if accepted for Golf Membership, the new holder shall execute a new Membership Agreement providing that Club Owner shall refund the New Golf Member Initiation Fee actually paid by the previous holder of the Golf Membership, as set forth in such previous holder's Membership Agreement.

### **3.2 Termination of Golf Memberships.**

**Recall of Membership.** Club Owner may recall any Golf Membership at any time for any reason and such Golf Membership shall terminate upon the recall and issuance of a refund of the New Golf Member Initiation Fee. Golf Memberships may be recalled on not less than 60 days' prior written notice to the Golf Member and the recalled Golf Member shall be entitled to a



refund of the New Golf Member Initiation Fee actually paid to Club Owner in accordance with the provisions of Section 3.3.

***Voluntary Resignation.*** Golf Members may voluntarily resign their Golf Membership by written notice to Club Owner. Such resignation shall be effective one year from the date such notice is received by Club Owner unless (a) the Golf Member requests and Club Owner approves a later effective date and Club Owner grants such request, or (b) Club Owner repurchases the resigned membership pursuant to these Membership Policies prior to the end of such one-year period. The resigning Golf Member may continue to enjoy the privileges of such Golf Membership through the effective date of such resignation. In the event of such voluntary resignation, the Golf Member may not rescind the resignation without the prior written consent of Club Owner. A voluntarily resigned Golf Membership may not be placed on any resale waiting list until title to the Golf Member's Amenities Residence is sold to a third party as determined by Club Owner.

***Other Events of Termination.*** In addition to the foregoing, a Golf Member shall be deemed to have resigned his or her Golf Membership and such Golf Membership shall automatically terminate upon occurrence of any of the following events:

- upon the death of a Golf Member who has not designated an applicable Immediate Family member, upon the designated Immediate Family member not being approved for Golf Membership, or on the 60th day following the death of a Golf Member who has a valid designated Immediate Family member unless the designated Immediate Family member has applied to have the Golf Membership transferred to him or her within the 60-day period following the Golf Member's death;
- upon the separation or divorce of a Golf Member, if the Golf Membership is vested in an individual other than the Golf Member, unless Club Owner has extended such individual an invitation to Golf Membership and such individual accepts such invitation; and
- upon the termination of the Golf Member's Amenities Membership;
- upon expulsion of the Golf Member pursuant to the disciplinary procedures set forth in Section 4.

***Rights and Obligations upon Termination.*** Golf Members shall be responsible for all dues, fees, and other charges accrued or incurred on such Golf Member's account through the date the terminated Golf Membership is re-issued. A Golf Member shall have no right to any payment upon termination of Golf Membership except as provided in Section 3, if applicable.

### **3.3 Repurchase and Reissuance of Golf Memberships.**

***Recalled Memberships.*** Club Owner shall repurchase a recalled Golf Membership within 30 days of the effective date of termination as specified in the notice of recall. Upon repurchase of a recalled Golf Membership, Club Owner shall pay to the former Golf Member 100% of the New Golf Member Initiation Fee actually paid by the former Golf Member. The

amount to be paid hereunder shall be reduced by any unpaid installments of the New Golf Member Initiation Fee and any outstanding fees, dues, and other charges due from the former Golf Member. A former Golf Member whose New Golf Member Initiation Fee was waived, or for any other reason did not pay a New Golf Member Initiation Fee, shall not be entitled to any payment. A former Golf Member shall be entitled to a refund of any dues prepaid for the period after the effective date of termination.

***Resigned or Terminated Memberships.*** Upon resignation or other termination of any Golf Membership (other than a recall by Club Owner), if the Golf Member has paid a New Golf Member Initiation Fee, Club Owner shall place the terminated Golf Membership on a waiting list for repurchase and reissuance. Club Owner shall maintain the waiting list based on the date that Club Owner receives written notice of the resignation or other event of termination of each such Golf Membership. Notwithstanding the foregoing, a voluntarily resigned Golf Membership may not be placed on any resale waiting list until title to the Golf Member's Amenities Residence is sold to a third party as determined by Club Owner; provided that, Club Owner may, in its sole discretion, place a voluntarily resigned Golf Membership on the resale waiting list prior to the sale of such Golf Member's Amenities Residence. In the event that a Golf Member on the waiting list owes any amount to Club Owner which is past due, Club Owner reserves the right to move the Golf Member to the bottom of the then current waiting list.

Until Two Hundred (200) Golf Memberships have been issued, no Golf Memberships shall be issued or sold off the waiting list. Thereafter and until all the Golf Memberships that may be offered by Club Owner are issued, every fourth membership which Club Owner issues shall be reissued from the waiting list. Thereafter, Club Owner shall issue a refund to the first person on the waiting list each time it sells a Golf Membership. Notwithstanding the preceding, Club Owner may recall any Golf Membership and issue a refund to the recalled Golf Member without regard to any waiting list then in effect.

Club Owner may, in its sole discretion, refund all or part of a terminating Golf Member's New Golf Member Initiation Fee sooner than required hereunder, without regard to the Golf Member's position on the waiting list for refunds; however, the issuance of any such refund shall not delay Club Owner's obligations with respect to other persons having a higher position on such waiting list than the person receiving such refund.

There is no guarantee that a Golf Membership will ever be reissued, or be reissued within a specified period, because reissuance is dependent upon another eligible person desiring a Golf Membership and Club Owner's invitation and approval of a prospective member.

***Amount Payable upon Resignation or Termination of Membership.*** Upon Club Owner's reissuance of a Golf Member's Membership, the resigning Golf Member shall be entitled to a refund of the New Golf Member Initiation Fee paid by the resigning Golf Member. All amounts payable to a resigning Golf Member for his or her Golf Membership shall be reduced by the amount of any outstanding assessments or fees owed to the Club and shall be paid to the resigning Golf Member within 30 days after the effective date of reissuance.

## 4. GOOD STANDING; DISCIPLINE

### 4.1 Good Standing.

Golf Member or Immediate Family member shall cease to be in “good standing” upon the occurrence of any of the following:

- failure to pay to Club Owner any fees, dues, or other charges, or any installment thereof, on or before the due date;
- failure to accompany a guest, when required, while using the Club Facilities;
- resignation or other termination of the Golf Membership by which the Golf Member or Immediate Family member was entitled to use the Golf Facilities;
- violation of these Membership Policies or the Club Rules;
- the Golf Member is no longer an Amenities Member;
- conviction of a felony or of any crime involving moral turpitude, or a determination by Club Owner that the person was convicted of a felony or such a crime prior to Club Owner’s approval of his or her application and failed to disclose such conviction prior to such approval; or
- commission of **any** act or acts which Club Owner determines to be inconsistent with these Membership Policies, the Club Rules, or the general decorum or familial atmosphere of the Club, or to be detrimental to or likely to endanger the welfare, safety, harmony or good reputation of Club Owner, the Club, or any Member, Immediate Family or guest of a Member, or employee of the Club.

CLUB OWNER’S DETERMINATION IN ACCORDANCE WITH THIS SECTION THAT ANY GOLF MEMBER IS NOT IN GOOD STANDING SHALL BE FINAL.

### 4.2 Discipline.

**General.** If Club Owner determines, in accordance with the procedures set forth below, that any Golf Member or any member of such Golf Member’s Immediate Family is no longer in good standing, Club Owner may impose such sanctions as it deems appropriate. Such sanctions may include, but need not be limited to, reprimand, temporary suspension of membership privileges, or expulsion and termination of Golf Membership. Any temporary suspension of Golf Membership privileges shall be for such period as Club Owner deems appropriate. A suspended Golf Member shall remain fully liable for all dues, fees, and other charges accruing during any period of suspension.

Club Owner’s determination that a member of a Golf Member’s Immediate Family is not in good standing shall be cause for suspension or termination of the Immediate Family member’s privilege of using the Club Facilities but shall not affect the privileges of the Golf Member or other Immediate Family members. Suspension or termination of a Golf Member’s rights due to

Club Owner's determination that the member is not in good standing shall also suspend or terminate all rights of the Golf Member's Immediate Family.

A person whose use privileges are suspended or terminated pursuant to this Section shall not be entitled to use the Club Facilities as the guest of another Golf Member, or otherwise. A Golf Member who has been expelled shall be deemed to have resigned his or her Golf Membership pursuant to Section 3.

## **5. MANAGEMENT, OPERATION AND TRANSFER OF CLUB FACILITIES**

### **5.1 Club Management.**

Club Owner shall have exclusive authority and the sole right to own, manage and operate the Club Facilities, which shall include, without limitation, the following:

***Staffing.*** Club Owner shall select, retain, supervise, direct, fix the compensation of, and discharge, in its sole discretion, all professionals and other personnel, agents, and/or independent contractors which Club Owner deems necessary or desirable for the smooth and efficient operation and maintenance of the Club Facilities. Any complaints regarding such personnel shall be directed to the Club's manager or such other person as Club Owner may designate. No person other than designated employees of Club Owner shall reprimand or admonish such personnel or direct them in performing their duties. Any Golf Member or Immediate Family member reprimanding or admonishing such personnel or directing them in performing their duties may be deemed not to be in good standing at the determination of Club Owner.

***Nature and Condition of Club Facilities.*** Club Owner reserves the right to add or eliminate facilities, discontinue or modify the operation of existing Club Facilities, and otherwise make such changes to the Club Facilities and level of operations as Club Owner deems appropriate in its sole discretion. Club Owner may also close any or all of the Club Facilities for extended periods of time for minor or major maintenance, renovation, construction, or reconstruction. Club Owner makes no representations or warranties with respect to the nature or condition of the Club Facilities or the suitability of the Club Facilities for any particular purpose. Club Owner shall not be obligated to establish or provide for capital reserves or any other reserve fund related to operation or maintenance of the Club Facilities.

***Club Rules and Policies.*** Club Owner shall have the exclusive authority to adopt and amend rules and policies governing use of and conduct on the Club Facilities, including policies regarding tee time allocation, reservations, and guest privileges. Such rules and policies are subject to change in Club Owner's sole discretion.

***Members Council.*** Club Owner may appoint a Golf Members Council to act in an advisory only capacity to Club Owner on issues determined by Club Owner, to assist in Club operations and/or activities, and otherwise to serve such purposes and functions as Club Owner may determine. All members of the Golf Members Council shall be appointed and may be removed and replaced by Club Owner in its sole and absolute discretion. The Golf Members Council shall have no duty or power to act on behalf of Club Owner or the Golf Members, or to take any action whatsoever except as approved by Club Owner. Club Owner, in its sole discretion, may consider any advice received by the Golf Members Council.

***Special Events.*** Club Owner reserves the right to make all or portions of the Club Facilities available to nonmembers for special events, including, without limitation, tournaments, private parties, and charitable events, to determine the number and scheduling of special events in its sole discretion, and to restrict Golf Members' use of the Club Facilities during such events.

***Hours of Operation.*** Club Owner shall have sole and exclusive authority to determine the hours of operation of the Club Facilities and to close portions of the Club Facilities during inclement weather and for maintenance, repair, and other purposes as Club Owner deems appropriate. Except in an emergency, Club Owner shall give the members not less than 14 days' prior notice if the golf course will be closed to regular play.

***Approval and Acceptance of Members.*** Club Owner shall have sole and exclusive authority to determine the qualifications for Golf Membership and to approve or reject any candidate for Golf Membership in accordance with such procedures as it may establish from time to time.

***Non-Discrimination.*** Club Owner shall not discriminate in any manner against any Golf Member or such Golf Member's Immediate Family, guest or candidate for Golf Membership on account of race, sex, religion, color, national origin, handicap, status as a veteran, creed, ancestry, familial status or sexual orientation.

***Profits, Losses, and Distributions.*** Club Owner shall be entitled to all income and profits and shall be responsible for all expenses and losses from operation of the Club Facilities, subject to its right to increase fees, dues, and other charges as provided in Section 2. In the event of a sale of the Club Facilities, any proceeds which Club Owner derives from such sale shall be the property of Club Owner and Golf Members shall have no interest therein, except to the extent of the payment, if any, to which Golf Members may be entitled upon termination and repurchase of their memberships pursuant to Section 3; provided, Golf Members shall have no interest in the proceeds derived by Club Owner from such sale if the purchaser of the Club Facilities has assumed the obligation to repay Golf Members upon termination and repurchase of their Golf Membership in accordance with these Membership Policies.

***Delegation.*** Club Owner shall have the right to delegate, transfer, or assign any or all of its rights and responsibilities for management and operation of the Club Facilities to such persons and on such terms and conditions as Club Owner deems appropriate in its sole and absolute discretion.

## **5.2 Nonmember Use.**

Club Owner reserves the right to make any or all of the Club Facilities available for use by persons other than Golf Members under such circumstances, terms and conditions, and upon payment of such fees and charges, as Club Owner shall determine in its sole and absolute discretion, including, without limitation to Amenities Members. Such uses may include, without limitation, tournaments, charitable events, banquets and other such activities in addition to the Club Owners' guests and events sponsored by Club Owners. In addition, Club Owner may make the Club Facilities available at any time to potential purchasers of Golf Memberships in the Club and Residence within the Community and to the officers, directors, partners, shareholders,

employees and designees of Club Owner and their guests. Club Owner further reserves the right, in its discretion, to restrict or to otherwise reserve in advance the Club Facilities for maintenance, overseeding, tournament or group play, outings and other special events from time to time.

### **5.3 Transfer of Club Facilities.**

Club Owner reserves the right to sell or otherwise transfer all or any portion of the Club Facilities to a third party or parties, upon such terms and conditions as Club Owner deems appropriate in its sole and absolute discretion, subject to the following:

- the new owner agrees to operate the Club Facilities in accordance with the Membership Policies then in effect (as they may be amended); or
- adopts a new membership program and agrees to exchange all Golf Memberships in good standing for memberships in such new program having substantially the same or better use privileges and rights upon termination as held by existing Golf Members in good standing, without requiring payment of any additional initiation fee; or
- a majority of the Golf Members in good standing otherwise agree;

each Golf Member whose rights under the existing Membership Policies are to be materially adversely affected, as described in Section 6.2, shall be given at least 30 days after receipt of notice of the proposed changes to elect either (i) to continue to use the Club Facilities on such terms and conditions as the new owner may establish, or (ii) to resign by written notice to Club Owner or new owner and receive a refund of the New Golf Member Initiation Fee set forth in the resigning Golf Member's Membership Agreement, less any unpaid installments of such New Golf Member Initiation Fee and less any outstanding dues, fees and other charges due from the resigning member. Any dues paid in advance shall be prorated as of the date of such termination.

In the event that a new owner discontinues or suspends the offering of Golf Memberships and does not substitute a different class of membership with similar or greater privileges than what is included in the discontinued Golf Membership, the new owner shall refund 100% of the New Golf Member Initiation Fee actually paid by any affected Golf Member, as set forth in their Membership Agreement, within 60 days of discontinuing or suspending Golf Membership.

In the event that Club Owner transfers all of the Club Facilities to a third party, Club Owner may assign to the new owner its rights to collect fees, dues, and other charges and the obligation to refund any New Golf Member Initiation Fee pursuant to the Membership Agreements with persons then holding Golf Memberships. Upon such transfer and assignment, the transferee shall assume the obligation to repay the New Golf Member Initiation Fee to the Golf Member and the Golf Member shall have no further recourse for the payment of such New Golf Member Initiation Fees against Club Owner.

## **6. GENERAL PROVISIONS**

### **6.1 Notices.**

Except as otherwise specifically provided in these Membership Policies, all notices or other communications (other than regular statements of account) required to be given or made hereunder shall be in writing and shall be delivered by hand or mailed by registered or certified mail, return receipt requested, postage prepaid, or by electronic mail to Golf Members so requesting. Notices delivered in person shall be deemed received upon actual receipt, and notices mailed shall be deemed received three days after deposited in the mail in accordance with this Section. Notices to Club Owner shall be delivered to the address of the Club Facilities. Notices to a Golf Member shall be addressed to the Golf Member at the address specified in the member's Membership Agreement, unless the Golf Member has provided written notice to Club Owner in accordance with this Section requesting that notices be given at a different address and providing such new address.

### **6.2 Amendment.**

Club Owner reserves the right, in its sole and absolute discretion, to amend these Membership Policies at any time and in any manner which it deems appropriate, including modifying playing privileges, establishing different classes and categories of membership, and establishing rules governing access, sign-up privileges and starting times with respect to the Club Facilities except that, if an amendment materially adversely affects the rights of existing members and is not approved by at least a majority of the members so affected, any member so affected shall have the right to terminate his or her membership by written notice delivered to Club Owner within 60 days after such amendment takes effect, in which event Club Owner shall refund 100% of the New Golf Member Initiation Fee actually paid by such terminating member within 60 days of the date Club Owner received such notice and the terminating member shall have no further rights, privileges, or obligations with respect to the Club or the membership. Only the following shall be considered to materially adversely affect the rights of a member under these Membership Policies:

- elimination of use privileges afforded to an individual member's membership;
- reduction in the number of Immediate Family members or designees permitted for such member's membership;
- increase in the number of authorized memberships in the member's class of membership, except that Club Owner shall be entitled to increase the number of authorized Golf Memberships it may issue in the event additional golf facilities are built;
- requirement of an additional New Golf Member Initiation Fee in order to continue existing privileges;
- a change in the provisions for assessment of members to permit assessment of the member for operating deficits without membership approval;

- elimination of the right to have a membership reissued in the name of an Immediate Family member upon the death of the member; or
- elimination or significant reduction in the rights of the member upon termination of the membership.

Notice of any amendment shall be delivered to the members within 30 days after the effective date of such amendment.

### **6.3 Assumption of Risk.**

In consideration for the privilege of using the Club Facilities, each person entering upon or using the Club Facilities agrees:

- to accept all risks associated with the use of the Club Facilities and to release Owner and Club Owner from and indemnify and defend Owner and Club Owner against any and all claims arising out of or in any way connected with such use of the Club Facilities, except to the extent directly resulting from the gross negligence or willful misconduct of Club Owner or its employees; and
- to assume sole responsibility for their personal safety and the safety of their personal property brought upon, used or stored at the Club Facilities. Neither Owner nor Club Owner shall be responsible for any loss or damage to any personal property brought upon, used or stored at the Club Facilities, except to the extent directly resulting from the gross negligence or willful misconduct of Club Owner or its employees.

Each Golf Member further agrees to be responsible and liable for any property damage and/or personal injury which he or she causes, or which is caused by his or her Immediate Family or guests, while on the Club Facilities, or at any activity or function operated, organized, arranged or sponsored by Club Owner. In addition, a Golf Member who arranges or sponsors any activity or function at the Club Facilities shall be responsible for any such damage or injury even if such damage or injury was not caused by the Golf Member. The cost of repairing any such damage shall be charged to the Golf Member's club account, as applicable.

As used in this Section "Club Owner" shall include Borrego Investors, LLC and its members, successors, assigns, officers, directors, and employees, and all persons, corporations, partnerships and other entities with whom they are or may in the future become affiliated.

### **6.4 No Ownership Interest.**

No Golf Member shall have any ownership or proprietary interest, beneficial interest, or any other vested interest whatsoever in the Club Facilities, or any of the assets of Club Owner. No Golf Member shall have any right to vote on or approve any matter relating to management or operation of Club except as specifically provided in these Membership Policies. No Golf Member shall have any right to vote or approve any matter relating to Club Owner's right to incur debt secured by the Club Facilities. All rights and privileges of Golf Members under these Membership Policies, the Club Rules, and the Membership Agreement are subordinate to the lien



of any mortgage encumbering the Club Facilities from time to time, subject to the mortgagee's recognition of these Membership Policies, the Club Rules, and the various Membership Agreements. Golf Membership constitutes only a license to use, on a priority basis, some or all of the Club Facilities as set forth in these Membership Policies, as they may be amended from time to time. Golf Membership is offered as an opportunity to obtain the golf benefits of the Club only and should NOT be viewed as an investment or purchased with any view toward or expectation of profit.

The term "member" is for descriptive purposes only. Notwithstanding any other provisions herein, a Golf Member is not a "member" within the meaning given to such term in the Nonprofit Corporation Law of California (as same may be amended from time to time) and is not entitled to any of the statutory rights provided to members under California law.

#### **6.5 Tax Consequences.**

Club Owner makes no representations and expresses no opinions regarding the federal or state income tax consequences of acquiring a Golf Membership. All Golf Members acquire their Golf Memberships subject to all applicable tax laws as they may exist from time to time. Certain provisions of the Internal Revenue Code impute interest income to a lender with respect to a non-interest bearing loan. It does not appear that these provisions currently apply to the Golf Memberships offered by Club Owner. The Internal Revenue Service may, however, issue regulations which might impute interest income to an New Golf Member Initiation Fee after the effective date of the regulations. Golf Members should consult with their own tax advisers with respect to the tax consequences of paying an New Golf Member Initiation Fee and Club Owner's non-interest bearing obligation to repay the New Golf Member Initiation Fee in accordance with these Membership Policies.

#### **6.6 Suitability Standards.**

Golf Membership in the Club will be offered only to those individuals whom are Amenities Members and whom Club Owner is able to determine meet the suitability requirements established by Club Owner. The suitability requirements are designed to ensure that candidates for Golf Membership have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of Golf Membership. Candidates for Golf Membership must satisfy one of the specific financial suitability requirements described in the Member Candidate Profile.

#### **6.7 Representations.**

No person is authorized to make any representation or provide any information with regard to Club Owner or Golf Memberships in the Club contrary or in addition to the information contained in these Membership Policies and the Membership Agreements referenced herein.