

RESOLUTION 2024-03

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE MONTECITO COMMUNITY DEVELOPMENT DISTRICT AMENDING THE ADOPTED RULES, POLICIES, AND FEES FOR THE MONTECITO AMENITY CENTER TO PROVIDE FOR CONDITIONAL TEMPORARY ACCESS OVER DISTRICT PROPERTY FOR LIMITED PURPOSES; PROVIDING DIRECTION TO DISTRICT COUNSEL AND THE DISTRICT MANAGER; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

WHEREAS, the Montecito Community Development District (hereinafter the "District") is a local unit of special purpose government created and existing pursuant to Chapter 190, Florida Statutes, being situated in the City of Satellite Beach, Brevard County, Florida; and

WHEREAS, the District owns, operates, and maintains certain lands and recreational amenity facilities within the boundaries of the District; and

WHEREAS, on January 19, 2015, pursuant to Resolution 2015-05 the District Board of Supervisors approved the Adopted Rules, Policies, and Fees for the Montecito Amenity Center, which Rules were subsequently amended on October 29, 2018, pursuant to Resolution 2019-01 (collectively, the "Rules"), which Rules pertain and govern the use of the District's lands and recreational facilities; and

WHEREAS, pursuant to Sections 120.54, 120.81, 190.011(5), and 190.035(2), Florida Statutes, the District is authorized to adopt and modify rules prescribing the conduct of the business of the District, the operation and maintenance of the District lands and facilities; and

WHEREAS, Chapter 190, Florida Statutes, authorizes the District to prescribe, fix, establish, and collect rates, fees and other charges for facilities and services furnished by the District; and

WHEREAS, the District Board desires to amend the section of the Rules entitled, "USE OF DISTRICT PROPERTY" to provide for temporary access to residential property owners within the District over property owned by the District or for which the District is responsible to maintain; and

WHEREAS, it is the intent of the District Board that the Rules amendments provided for herein will replace the use of the Temporary Access Easement instrument previously authorized and currently utilized pursuant to Resolution 2023-10, adopted July 12, 2023; and

WHEREAS, the Board finds and determines that these Rules amendments will be a cost and time savings for the District and will make it much easier and more efficient for residential property owners to secure access over District property interests in order to make improvements to their properties where such access is required; and

WHEREAS, the District advertised a public hearing for March 13, 2024, in order to hear and receive comments on the proposed changes and additions to the Rules pursuant to the requirements of Chapter 120, Florida Statutes; and

WHEREAS, after the duly advertised public hearing held on March 13, 2024 the District Board of Supervisors has determined that it is in the best interests of the District and the residents of and visitors to the District to adopt the amendments, changes, revisions, additions and deletions to the Rules as provided herein, and to incorporate the same into an updated version of the Adopted Rules, Policies, and Fees for the Montecito Amenity Center.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE MONTECITO COMMUNITY DEVELOPMENT DISTRICT, THAT:

Section 1. The above recitals are true and correct and are incorporated in and adopted as part of this Resolution.

Section 2. The section of the Rules, entitled “USE OF DISTRICT PROPERTY,” is amended, as follows:

USE OF DISTRICT PROPERTY

(1) No trash, debris, lumber, metals, bulk materials, garbage or other waste material or refuse shall be kept, placed, stored and/or allowed to accumulate on any part of the District Property, except building material during the course of any previously approved residence improvement by the Master Homeowners Association, Single Family Homeowners Association and/or Townhomes Association, as set forth in the covenants of the respective Homeowners Association.

(2) The misuse, disabling, modification, tampering, interference of any District property, including, but not limited to irrigation pumps, timers, valves, gates, security system, air conditioning system and controls, pool pumps and systems, furniture, kitchen equipment, decorations, lighting and lighting controls, internet, audio visual equipment, fitness equipment, playground facilities, District’s rights-of-way, road verge, District’s landscaping, and District’s signage is strictly prohibited.

(3) Temporary Access for purposes of approved residence improvement. A Property Owner may request permission, for a limited time period, to utilize District property for purposes of ingress and egress in order to access the residential property of said Property Owner to accommodate the installation or

construction of a residential improvement (i.e. the Property Owner requests the use of District property for purposes of ingress and egress in connection with the installation of a paver deck in Property Owner's backyard). The District may grant such permission to the Property Owner under the following conditions:

- a. Property Owner completes and executes a Montecito CDD Temporary Access Request Form and Agreement (the "Request Form") agreeing to all terms of the Request Form, and Property Owner delivers the same with all required back-up documentation and information required by this section to the District (the Request Form can be obtained from and all submittals required by this section shall be made to the General Manager of the Montecito Beach Club Amenity Center (the "General Manager") or to the individual otherwise designated by motion of the Board); and
- b. Property Owner has secured and submits to the General Manager written approval from the architectural review board (ARB) having jurisdiction for the improvements proposed to the real property of Property Owner; and
- c. Property Owner provides the General Manager with a detailed description of the proposed work to be performed for the improvements, the location of the work and improvements, and the estimated time to complete the improvements; and
- d. Property Owner provides the General Manager with a detailed sketch or drawing (engineering plans or survey is not required) of the location of the District property (the "Ingress/Egress Area") that the Property Owner is seeking to utilize for purposes of ingress and egress in order to facilitate the improvements proposed to the real property of Property Owner; and
- e. Property Owner provides the General Manager proof of ownership of the real property of Property Owner; and
- f. Property Owner pays to the District a non-refundable application fee in the amount of \$50.00 and a deposit in the amount of \$300.00 made payable to the Montecito Community Development District. The deposit will be cashed and deposited by the District, and after Property Owner completes the improvements that are the subject of the Request Form, the deposit shall be returned to the Property Owner minus any costs incurred by the District to repair or replace damages to any property or facilities of the District arising out of or in any way connected to Property Owner's use of the Ingress/Egress Area or District property. Any damages in excess of the deposit amount shall be the responsibility of the Property Owner and shall be paid to the District within thirty (30) days of an invoice for the same being sent to Property Owner at the address set forth on the Request Form. After the subject improvements are completed or the Property Owner informs the District that the subject improvements will not be made, the District will return the remaining deposit amount within sixty (60) days of the Property Owner's request to the General Manager for an inspection; and

- g. The Request Form has been executed by the Property Owner, which shall include all lawful fee simple owners of the residential property (i.e. if the husband and wife are owners pursuant to the deed of ownership, both the husband and the wife must sign the Request Form); and
- h. The Ingress/Egress Area shall be no more than ten (10') wide, unless otherwise specified as a special condition by the General Manager on the approved Request Form; and
- i. The permission to use the Ingress/Egress Area for purposes of access, ingress and egress is limited to one hundred eighty (180) days from the date the General Manager executes the Request Form; and
- j. For purposes of this section, the permission to use the Ingress/Egress Area is limited to the Property Owner and Property Owner's agents, assigns, employees and independent contractors, for which Property Owner shall be fully responsible; and
- k. Property Owner agrees to be responsible for any damages to the Ingress/Egress Area and to any District property or facilities arising out of the use of Ingress/Egress Area as permitted pursuant to this section; and
- l. Nothing in this section or in the Request Form shall be construed to grant Property Owner any permission or authorization to use any portion of District property other than the Ingress/Egress Area, and such permission does not extend to any other District property, privately owned property, or lot of the Property Owner's neighbors or other owners in the vicinity of Property Owner's property; and
- m. Property Owner shall be responsible for securing all required permits from the City of Satellite Beach, the applicable homeowner's association, or any governmental entity having jurisdiction over the improvements proposed or made to the property of Property Owner.

(4) Any violation of this section shall invoke the Suspension and Termination of Privileges section set forth herein and subject the violator to the imposition of costs and administrative fees for the removal of offending items and repairs or replacement of any District property damaged.

Section 3. Direction to District Counsel. District Counsel is directed to incorporate the amendments, changes, revisions, additions and deletions provided herein to create an updated version of the Adopted Rules, Policies, and Fees for the Montecito Amenity Center, and to circulate the same to the District Manager.

Section 4. Direction to District Manager. The District Manager is hereby directed to take all actions consistent with this Resolution. The District Manager shall include this adopted Resolution as part of the Official Records of Proceeding of the District, distribute the Rules as appropriate to affected parties and in accordance with Chapters 120 and 190, Florida Statutes, and post the Rules, as updated pursuant to this Resolution, on the District's website.

Section 5. Conflicts. All motions, resolutions or parts of motions or resolutions in conflict herewith are hereby repealed to the extent of such conflict. Specifically, Resolution

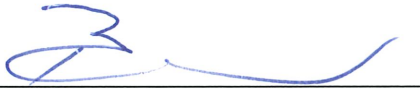
2018-04 and Resolution 2023-19, previously adopted by the Board shall be of no further force and effect.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

Section 7. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED in Public Session of the Board of Supervisors of the Montecito Community Development District, this 13th day of March, 2024 (the “Effective Date”).

Attest:



Frank Sakuma, Secretary

**MONTECITO COMMUNITY
DEVELOPMENT DISTRICT**



Catherine LeCesne, Chairperson
Board of Supervisors

MONTECITO CDD
TEMPORARY ACCESS REQUEST FORM AND AGREEMENT

Property Owner(s): _____

Property Owner's property address within CDD: _____
Satellite Beach, Florida 32937

Parcel ID (from Brevard County Property Appraiser): _____
Lot # _____, Plat of _____ (Plat Book ____, Page__)

Property Owner's Home Address (if different from above): _____

Proposed improvement(s) to Property Owner property (the "Improvements"):

Describe improvements: _____

Location of Improvements (i.e. rear yard, side yard): _____

Estimated Completion Date: _____

Special Conditions requested by Property Owner: _____
(not approved unless identified as part of the approval on page 4 hereof)

Montecito CDD Property ("District Property") over which Property Owner requests temporary access (identify each parcel by Parcel ID and legal description (by Plat), as identified by the Brevard County Property Appraiser:

Parcel ID (from Brevard County Property Appraiser): _____
Tract _____, Plat of _____ (Plat Book ____, Page__)

And

Parcel ID (from Brevard County Property Appraiser): _____
Tract _____, Plat of _____ (Plat Book ____, Page__)

Property Owner to attach detailed sketch/drawing identifying the portion(s) of District Property that the Property Owner is requesting access over (the "Ingress/Egress Area"), as limited by the Adopted Rules, Policies, and Fees of the Montecito Amenity Center.

Property Owner, by executing this Montecito CDD Temporary Access Request Form and Agreement (the "Request Form") hereby consents to, acknowledges, and agrees as follows:

1. Property Owner has read, understands, and hereby agrees to abide by and be responsible as provided in the section of the Adopted Rules, Policies, and Fees for the Montecito Amenity Center, entitled "USE OF DISTRICT PROPERTY," a copy of which is attached to and made a part of this Request Form as Exhibit A.

2. Upon acceptance of this Request Form by the General Manager of the Montecito CDD, the Montecito CDD hereby grants to Property Owner a temporary, non-exclusive easement over, upon, under, through, and across the portions of Ingress/Egress Area, as shown in the attached sketch/drawing attached hereto and made a part hereof as Exhibit B, for the purpose of Property Owner gaining access to the Property Owner's Property (as described above) for the purpose of constructing the Improvements. The Property Owner agrees and acknowledges that, while the Montecito CDD believes that it is the lawful owner of or is the responsible maintenance entity of the Ingress/Egress Area, the Montecito CDD has not verified such ownership and makes no representations or warranties regarding such ownership. It shall be the Property Owner's responsibility to confirm property-ownership to ensure that Property Owner is not using property over which it has not been granted legal access. Additionally, Property Owner agrees and acknowledges that the Montecito CDD makes no representations or warranties that the Ingress/Egress Area is wide enough or suitable for the Property Owner's needs. To the extent there is any discrepancy in ownership or if the Ingress/Egress Area is not wide or large enough or otherwise suitable for the Property Owner's needs, the Property Owner, on behalf of Property Owner and its contractors, agents, employees, and assigns, assumes any and all risk and liability associated with trespassing or any other unauthorized use of such property. Nothing herein shall be interpreted or construed to grant any easement or other rights, temporary or otherwise, over any property other than the Ingress/Egress Area.

3. Property Owner agrees to indemnify and hold the Montecito CDD, its officers, agents, and employees harmless from and against any and all damages, losses or claims, including but not limited to legal fees and expenses, to the extent that such damages, losses or claims arise out of or are in any way connected with the acts, omissions or negligence in the use of the Ingress/Egress Area or other lands or with respect to the installation or construction of the Improvements by Property Owner, Property Owner's agents, employees or independent contractors.

4. In the event that Property Owner, Property Owner's employees, agents, assignees, or contractors (or their subcontractors, employees or materialmen) cause damage to the Ingress/Egress Area or any of the improvements or facilities located within the Ingress/Egress Area or causes damage to the District Property or the Montecito CDD's other property or any improvements or facilities located thereon, in the exercise of the rights granted herein, Property Owner shall be responsible for any and all such damages. Property Owner, at Property Owner's sole cost and expense, agrees to commence and diligently pursue the restoration of the same and the improvements so damaged to as nearly as practical to the original condition and grade, including, without limitation, repair and replacement of any landscaping, hardscaping, plantings, ground cover, irrigation systems, roadways, driveways, sidewalks, parking areas, fences, walks, utility lines, stormwater facilities, pumping facilities, pumps and other structures, within thirty (30) days after receiving written notice of the occurrence of any such damage. Property Owner shall allow no lien to attach to the Ingress/Egress Area or any

improvements located on said property, the District Property, or the Montecito CDD's other property arising out of work performed by, for, or on behalf of Property Owner. Property Owner shall be fully responsible for any damages to Montecito CDD-owned or private property arising out of or in any way connected with Property Owner's exercise of the rights granted herein. Further, nothing herein shall be construed or interpreted to require the Montecito CDD to move or remove any of its facilities, including, but not limited to, irrigation lines, fencing, and landscaping, located within the Property Owner's Property or the District Property. Property Owner shall be responsible and liable for any and all costs associated with the moving, removal, or damages to such facilities. Property Owner understands and acknowledges that Property Owner is responsible for the acts, omissions, and negligence of Property Owner's agents, including any contractors or subcontractors performing work or providing services on behalf of Property Owner or at the Property Owner's direction.

5. NOTHING HEREIN PURPORTS TO GRANT PROPERTY OWNER ANY PERMISSION OR AUTHORIZATION TO UTILIZE ANY PORTION OF ANY PROPERTY OTHER THAN THE INGRESS/EGRESS AREA. THE APPROVAL DOES NOT GRANT ANY PERMISSION FOR USE OR ACCESS OVER ANY OTHER PRIVATE LOTS OR OTHER PROPERTIES OF THE MONTECITO CDD OR OTHERWISE. PROPERTY OWNER SHALL BE RESPONSIBLE TO SECURE THE PERMISSION OR AUTHORIZATION TO UTILIZE ANY SUCH OTHER PROPERTY AS NEEDED.

6. In the event that the Montecito CDD seeks to enforce this Request Form by court proceedings or otherwise, then the Montecito CDD, if the prevailing party, shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution or appellate proceedings. Venue for purpose of any litigation or other proceedings shall be Brevard County, Florida.

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WITH THE SUBMITTAL OF THIS REQUEST FORM to the Montecito CDD, the Property Owner consents, acknowledges and agrees to the provisions of this Request Form and the section of the Adopted Rules, Policies, and Fees of the Montecito Amenity Center, entitled "USE OF DISTRICT PROPERTY."

PROPERTY OWNER(s):

Print name: _____

Print name: _____

Date: _____

Date: _____

MONTECITO CDD (area below to be completed by the General Manager of the Montecito CDD):

Date initial submittal of Request Form received by General Manager: _____

_____ (GM Initial) Non-Refundable Application Fee Received

_____ (GM Initial) Deposit Received

_____ (GM Initial) Proof of Ownership Received

_____ (GM Initial) ARB Approval Received

_____ (GM Initial) Sketch/Drawing of Ingress/Egress Area Received

_____ (GM Initial for approval or N/A) Special Conditions approved

The General Manager of the Montecito Beach Club Amenity Center of the District hereby finds that this Request Form is complete and is approved. Upon execution by the General Manager, this shall constitute an agreement between the Montecito CDD and the Property Owner. Temporary access over the Ingress/Egress Area shall expire 180 days from the date of approval.

Print name: _____

Title: _____

Date Approved: _____

Upon approval of this Request Form, the General Manager shall transmit the Request Form, all exhibits and required back-up documentation thereto to the District Manager of the Montecito CDD.

Exhibit A

Adopted Rules, Policies, and Fees for the Montecito Amenity Center

USE OF DISTRICT PROPERTY

(1) No trash, debris, lumber, metals, bulk materials, garbage or other waste material or refuse shall be kept, placed, stored and/or allowed to accumulate on any part of the District property, except building material during the course of any previously approved residence improvement by the Master Homeowners Association, Single Family Homeowners Association and/or Townhomes Association, as set forth in the covenants of the respective Homeowners Association.

(2) The misuse, disabling, modification, tampering, interference of any District property, including, but not limited to irrigation pumps, timers, valves, gates, security system, air conditioning system and controls, pool pumps and systems, furniture, kitchen equipment, decorations, lighting and lighting controls, internet, audio visual equipment, fitness equipment, playground facilities, District's rights-of-way, road verge, District's landscaping, and District's signage is strictly prohibited.

(3) Temporary Access for purposes of approved residence improvement. A Property Owner may request permission, for a limited time period, to utilize District property for purposes of ingress and egress in order to access the residential property of said Property Owner to accommodate the installation or construction of a residential improvement (i.e. the Property Owner requests the use of District property for purposes of ingress and egress in connection with the installation of a paver deck in Property Owner's backyard). The District may grant such permission to the Property Owner under the following conditions:

- a. Property Owner completes and executes a Montecito CDD Temporary Access Request Form and Agreement (the "Request Form") agreeing to all terms of the Request Form, and Property Owner delivers the same with all required back-up documentation and information required by this section to the District (the Request Form can be obtained from and all submittals required by this section shall be made to the General Manager of the Montecito Beach Club Amenity Center (the "General Manager") or to the individual otherwise designated by motion of the Board); and
- b. Property Owner has secured and submits to the General Manager written approval from the architectural review board (ARB) having jurisdiction for the improvements proposed to the real property of Property Owner; and
- c. Property Owner provides the General Manager with a detailed description of the proposed work to be performed for the improvements, the location of the work and improvements, and the estimated time to complete the improvements; and
- d. Property Owner provides the General Manager with a detailed sketch or drawing (engineering plans or survey is not required) of the location of the District property (the "Ingress/Egress Area") that the Property Owner is seeking to utilize for purposes of ingress and egress in order to facilitate the improvements proposed to the real property of Property Owner; and
- e. Property Owner provides the General Manager proof of ownership of the real property of Property Owner; and
- f. Property Owner pays to the District a non-refundable application fee in the amount of \$50.00 and a deposit in the amount of \$300.00 made payable to the Montecito Community Development District. The deposit will be cashed and deposited by the District, and after Property Owner completes the improvements that are the subject of the Request Form, the deposit shall be returned to the Property Owner minus any costs incurred by the District to repair or replace damages to any property or facilities of the District arising out of or in any

way connected to Property Owner's use of the Ingress/Egress Area or District property. Any damages in excess of the deposit amount shall be the responsibility of the Property Owner and shall be paid to the District within thirty (30) days of an invoice for the same being sent to Property Owner at the address set forth on the Request Form. After the subject improvements are completed or the Property Owner informs the District that the subject improvements will not be made, the District will return the remaining deposit amount within sixty (60) days of the Property Owner's request to the General Manager for an inspection; and

- g. The Request Form has been executed by the Property Owner, which shall include all lawful fee simple owners of the residential property (i.e. if the husband and wife are owners pursuant to the deed of ownership, both the husband and the wife must sign the Request Form); and
- h. The Ingress/Egress Area shall be no more than ten (10') wide, unless otherwise specified as a special condition by the General Manager on the approved Request Form; and
- i. The permission to use the Ingress/Egress Area for purposes of access, ingress and egress is limited to one hundred eighty (180) days from the date the General Manager executes the Request Form; and
- j. For purposes of this section, the permission to use the Ingress/Egress Area is limited to the Property Owner and Property Owner's agents, assigns, employees and independent contractors, for which Property Owner shall be fully responsible; and
- k. Property Owner agrees to be responsible for any damages to the Ingress/Egress Area and to any District property or facilities arising out of the use of Ingress/Egress Area as permitted pursuant to this section; and
- l. Nothing in this section or in the Request Form shall be construed to grant Property Owner any permission or authorization to use any portion of District property other than the Ingress/Egress Area, and such permission does not extend to any other District property, privately owned property, or lot of the Property Owner's neighbors or other owners in the vicinity of Property Owner's property; and
- m. Property Owner shall be responsible for securing all required permits from the City of Satellite Beach, the applicable homeowner's association, or any governmental entity having jurisdiction over the improvements proposed or made to the property of Property Owner.

(4) Any violation of this section shall invoke the Suspension and Termination of Privileges section set forth herein and subject the violator to the imposition of costs and administrative fees for the removal of offending items and repairs or replacement of any District property damaged.

Exhibit B

Ingress/Egress Area