

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

107B



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
July 2, 2014

SUBJECT: Approval of Final Parcel Map 34159, a Schedule "E" Subdivision in the Thermal Area and Approval of Subdivision Improvement, Monumentation, and Lien Agreements Associated Therewith. 4th/4th District; [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Final Parcel Map; and
2. Approve the Subdivision Improvement Agreements; and
3. Approve the Monumentation Agreement; and
4. Approve the Lien Agreement; and
5. Authorize the Chairman of the Board to sign on behalf of the County of Riverside the Final Parcel Map, the Subdivision Improvement Agreements, the Monumentation Agreement, and the Lien Agreement associated therewith.

BACKGROUND:

Summary

Tentative Parcel Map 34159 was approved by the Board of Supervisors with Fast Track status on September 26, 2006, as Agenda Item 16-1. This 151.73 acre subdivision is creating 69 commercial parcels in the Thermal area. This final parcel map complies in all respects with the provisions of Division 3 of Title 15 of the Government Code and applicable local ordinances. All necessary conditions of approval have been satisfied to allow for the recordation of the final map.

Patricia Romo

Juan C. Perez, Director of Transportation and Land Management Assistant Director of Transportation

HS:lf

- Submittals: Final Map
Road/Drainage Improvement Agreements
Water System Improvement Agreements
Sewer System Improvement Agreements
Monumentation Agreement
Lien Agreement

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: July 29, 2014
xc: Transp.; Recorder

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref. 09/26/06, Item 16-1 | **District:** 4/4 | **Agenda Number:**

2-19

REVIEWED BY EXECUTIVE OFFICE

DATE 08/01/14

Tina Grande

Departmental Concurrence

FORM APPROVED COUNTY COUNSEL

BY:
CYNTHIA M. GUNZEL

DATE

Policy

Consent

Dep't Recomm.:

Policy

Consent

Per Exec. Ofc.:

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approval of Final Parcel Map 34159, a Schedule "E" Subdivision in the Thermal Area and
Approval of Subdivision Improvement, Monumentation and Lien Agreements Associated Therewith. 4th/4th
District; [\$0]

DATE: July 2, 2014

PAGE: 2

BACKGROUND:

Summary (continued)

The developer, Desert Cities Industrial Park (DCIP), desires to enter into Subdivision Improvement Agreements to guarantee the construction of the required improvements, a Monumentation Agreement to guarantee the placement of survey monuments, and a Lien Agreement to guarantee the funding for the improvements and monuments. The Subdivision Improvement and Monumentation Agreement and Lien Agreement for Securities have been approved by County Counsel as to form.

On July 17, 2009, Coachella Valley Water District (CVWD) sent a letter to DCIP indicating that the development will unreasonably interfere with its free and complete exercise of the unrecorded easements and/or facilities held by the United States Bureau of Reclamation, and maintained by CVWD. DCIP responded by making modifications as follows:

- 1) Redesigned Aviation Road to avoid the Thermal Drain and Stormwater Channel
- 2) Placed the following note on each sheet of the final map: "NOTE: NO WATER OR SEWER SYSTEMS ARE AVAILABLE FOR THIS LAND DIVISION AS OF THE DATE OF RECORDATION OF THIS MAP. NO ISSUANCE OF GRADING OR CONSTRUCTION PERMITS IS ALLOWED UNTIL WATER AND SEWER DISPOSAL SYSTEMS ARE PROVIDED IN ACCORDANCE WITH RIVERSIDE COUNTY ORDINANCE 460."
- 3) Plotted and noted on the final map all easements of record as listed in the preliminary title report for the property
- 4) Provided to CVWD on November 9, 2013, a written non-interference acknowledgement letter that DCIP agrees to submit an abandonment package to CVWD prior to the issuance of the first building permit

For a summary of CVWD concerns of interference and the County of Riverside's (County) resolution to insure that the development will not unreasonably interfere with the free and complete exercise of the interests, see Exhibit A.

In addition to the actions and correspondence noted, the County has met with CVWD on several occasions to discuss concerns and mitigation measures to address concerns.

Pursuant to Government Code Section 66436, DCIP, on November 9, 2013, sent CVWD by certified mail a request for a non-interference acknowledgement letter to allow the map to record. CVWD failed to respond to the County and applicant within the required 30 days. In accordance with Section 66436(a)(3)(A)(iv), if an objection is not received, then the County may record the final map without CVWD's signature.

The Transportation Department recommends the approval of Subdivision Improvement Agreements, Monumentation Agreement, Lien Agreement, and final map.

**AGREEMENT
FOR THE CONSTRUCTION OF ROAD/DRAINAGE IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and Honzel Development LLC, an Oregon limited liability company hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Parcel Map 34159, hereby agrees, at Contractor's own cost and expense, to commence construction within 36 months and to furnish all labor, equipment and materials necessary to perform and complete construction within 48 months from the date this agreement is executed, in a good and workmanlike manner, all road and drainage improvements in accordance with those Road Plans for said land division which have been approved by the County Director of Transportation, and are on file in the office of the Riverside County Transportation Department, and do all work incidental thereto in accordance with the standards set forth in Riverside County Ordinance No. 461, as amended, which are hereby expressly made a part of this agreement. All the above required work shall be done under the inspection of and to the satisfaction of the County Director of Transportation, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of Ten million three hundred twenty-five thousand and no/100 Dollars (\$10,325,000.00).

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond or other security guaranteeing the completion of the road and drainage improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, his agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, his agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

FIFTH: The Contractor shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all

times up to the completion and formal acceptance of the works of improvement. The Contractor shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, his agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, his agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, he shall be in default of this agreement and notice of such default shall be served upon him. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement bond or other security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and, in all cases other than where a lien agreement is used, a good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or other security with good and sufficient sureties or increase the amount of said bond(s) or other security, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, he shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

NINTH: Whenever a lien agreement is used as security under the provisions of Government Code Section 66499 (a) (4) and Riverside County Ordinance 460 § 17.3, Contractor agrees, prior to commencing the work, to substitute the lien agreement with a good and sufficient improvement bond or other security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

TENTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds or other security securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds or other security. Contractor further agrees to maintain the aforesaid bonds or other security in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

ELEVENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

TWELFTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County
Construction Engineer
Riverside County Transportation Dept.
2950 Washington Street
Riverside, CA 92504

Contractor
Honzel Development, LLC
12929 S.W. Forest Meadows Way
Lake Oswego, OR 97034

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

By See attached signature page

Title _____

By _____

Title _____

COUNTY OF RIVERSIDE

By Jeff Stone
JEFF STONE
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

KECIA HARPER-IHEM,
Clerk of the Board

By Kecia Harper-Ihem
Deputy

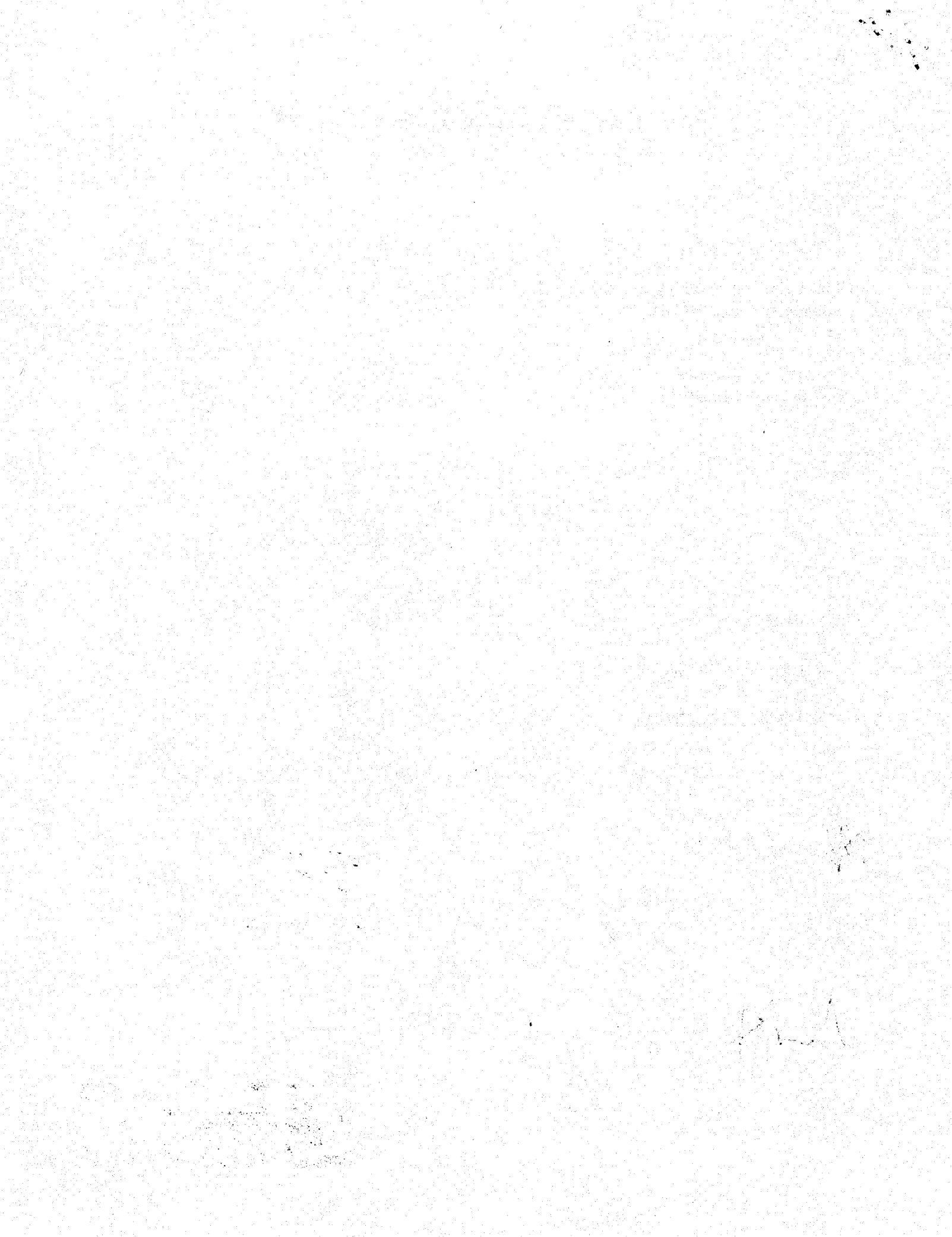
APPROVED AS TO FORM

County Counsel

By [Signature]

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPLICATE**

Revised 02/02/10

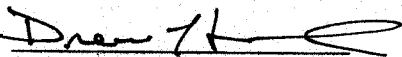


Signature Page of Owner for Agreement for the
Construction of Road/Drainage Improvements

"CONTRACTOR"

HONZEL DEVELOPMENT, LLC,
an Oregon limited liability company

By: Honzel Limited Partnership,
an Oregon limited partnership
Its: Sole Member

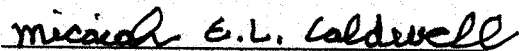
By: 
Drew Honzel, General Partner

ACKNOWLEDGMENT

STATE OF OREGON

COUNTY OF Klamath

This instrument was acknowledged before me on 7-24-13 (date) by
Drew Honzel (name(s) of person(s)) as General Partner (type of authority, e.g., officer, trustee,
etc.) of Honzel Limited Partnership. (name of party on behalf of whom instrument was executed)



NOTARY PUBLIC

Print Name: Micaiah E.L. Caldwell

My Commission Expires:

3-20-16



11

1880

1880

1880

1880

1880



**AGREEMENT
FOR THE CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and Honzel Development LLC, an Oregon limited liability company, hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Parcel Map 34159, hereby agrees, at Contractor's own cost and expense, to commence construction within **36** months and cause to have constructed within **48** months from the date this agreement is executed, in a good and workmanlike manner, a water distribution system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said distribution system, and, further, to extend main or mains from the existing supply system maintained and operated by City of Coachella to connect with the distribution system described above with all pipe laid at such a depth as to provide a full thirty-six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the Director of Transportation, all in accordance with those plans and specifications which have been approved by both the County Health Director and Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **One million one hundred eighty-one thousand five hundred and no/100 Dollars (\$1,181,500.00)**.

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond or other security guaranteeing the completion of the water system improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, his agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, his agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any

extension thereof granted by the County.

FIFTH: The Contractor shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Contractor shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, his agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, his agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, he shall be in default of this agreement and notice of such default shall be served upon him. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement bond or other security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and, in all cases other than where a lien agreement is used, a good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or other security with good and sufficient sureties or increase the amount of said bond(s) or other security, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, he shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

NINTH: Whenever a lien agreement is used as security under the provisions of Government Code Section 66499 (a) (4) and Riverside County Ordinance 460 § 17.3, Contractor agrees, prior to commencing the work, to substitute the lien agreement with a good and sufficient improvement bond or other security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and a good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

TENTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds or other security securing this agreement, that, in the event it is deemed necessary to extend the time of

completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds or other security. Contractor further agrees to maintain the aforesaid bonds or other security in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

ELEVENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

TWELFTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County	Contractor
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	Honzel Development, LLC 12929 S.W. Forest Meadows Way Lake Oswego, OR 97034

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

By See attached signature page

Title _____

By _____

Title _____

COUNTY OF RIVERSIDE

By Jeff Stone
JEFF STONE

ATTEST. **CHAIRMAN, BOARD OF SUPERVISORS**

KECIA HARPER-IHEM,
Clerk of the Board

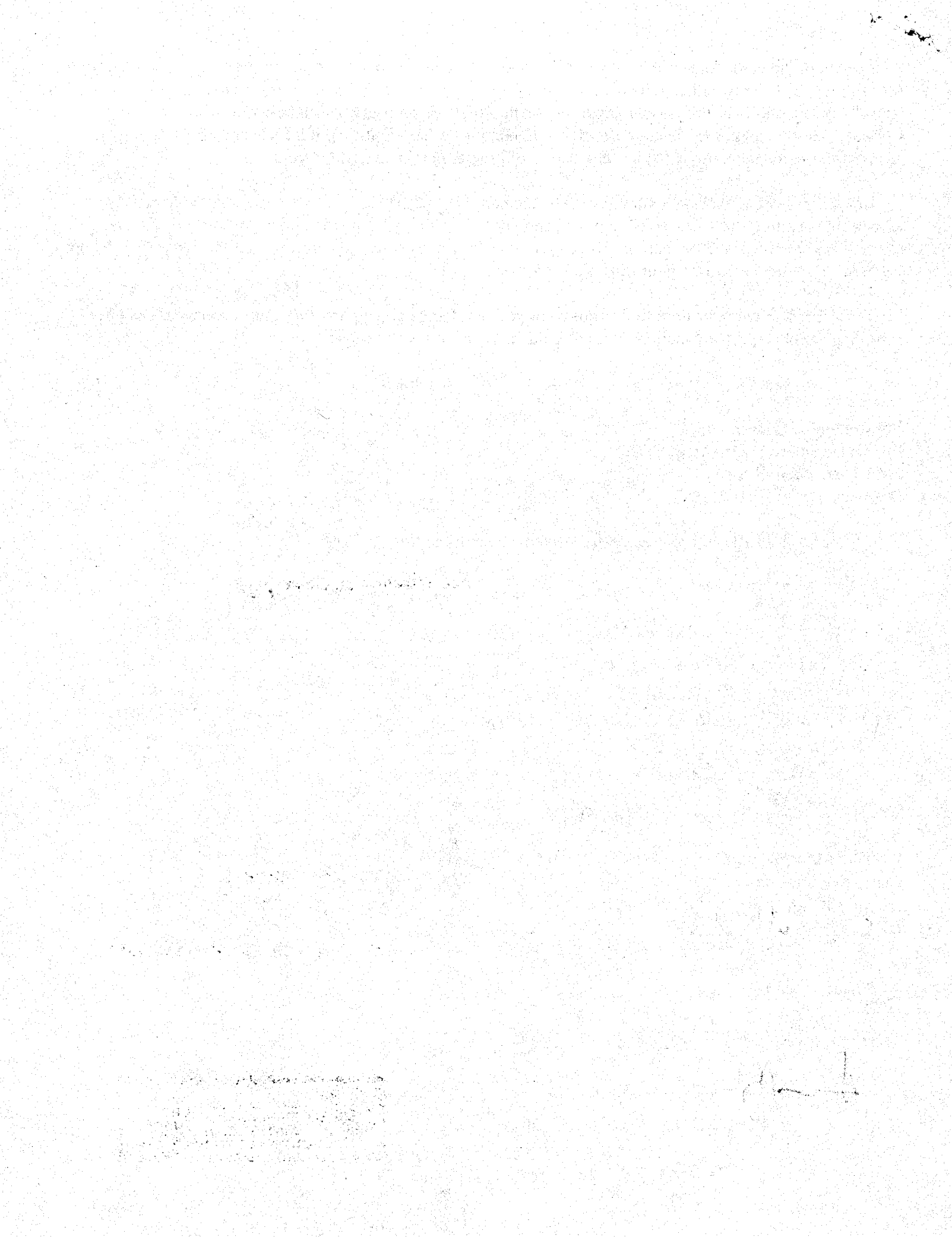
By Kuerstjan
Deputy

APPROVED AS TO FORM

County Counsel

By [Signature]

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPLICATE**



**Signature Page of Owner for Agreement for the
Construction of Water System Improvements**

"CONTRACTOR"

HONZEL DEVELOPMENT, LLC,
an Oregon limited liability company

By: Honzel Limited Partnership,
an Oregon limited partnership
Its: Sole Member

By: *Drew Honzel*
Drew Honzel, General Partner

ACKNOWLEDGMENT

STATE OF OREGON

COUNTY OF Klamath

This instrument was acknowledged before me on 7-24-13 (date) by
Drew Honzel (name(s) of person(s)) as General Partner (type of authority, e.g., officer, trustee,
etc.) of Honzel Limited Partnership. (name of party on behalf of whom instrument was executed)

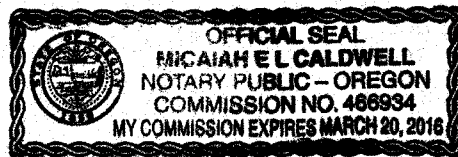
Micaiah E.L. Caldwell

NOTARY PUBLIC

Print Name: Micaiah E.L. Caldwell

My Commission Expires:

3-20-16





10/10/10

10-25-8

**AGREEMENT
FOR THE CONSTRUCTION OF SEWER SYSTEM IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and Honzel Development LLC, an Oregon limited liability company, hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Parcel Map 34159, hereby agrees, at Contractor's own cost and expense, to commence construction within 36 months and cause to have constructed within 48 months from the date this agreement is executed, in a good and workmanlike manner, a sanitary sewer system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said sanitary sewer system. Contractor further agrees to extend the main or mains from the existing sewer system maintained and operated by City of Coachella to connect with the sanitary sewer system required to be constructed by this agreement. All the above required work shall be in accordance with those plans and specifications which have been approved by the Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County and accepted by the above-named agency into its sewer system. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. The estimated cost of said work and improvements is the sum of One million two hundred seventy-four thousand and no/100 Dollars (\$1,274,000.00).

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond or other security guaranteeing the completion of the water system improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, his agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, his agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

FIFTH: The Contractor shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Contractor shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, his agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, his agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, he shall be in default of this agreement and notice of such default shall be served upon him. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement bond or other security prescribed by in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and, in all cases other than where a lien agreement is used, a good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or other security with good and sufficient sureties or increase the amount of said bond(s) or other security, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, he shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

NINTH: Whenever a lien agreement is used as security under the provisions of Government Code Section 66499 (a) (4) and Riverside County Ordinance 460 § 17.3, Contractor agrees, prior to commencing the work, to substitute the lien agreement with a good and sufficient improvement bond or other security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

TENTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds or other security securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds or other security.

Contractor further agrees to maintain the aforesaid bonds or other security in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

ELEVENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

TWELFTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County
Construction Engineer
Riverside County Transportation Dept.
2950 Washington Street
Riverside, CA 92504

Contractor
Honzel Development, LLC
12929 S.W. Forest Meadows Way
Lake Oswego, OR 97034

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

By see attached signature page

Title _____

By _____

Title _____

COUNTY OF RIVERSIDE

By Jeff Stone
JEFF STONE
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

KECIA HARPER-IHEM,
Clerk of the Board

By Kallie Parker
Deputy

APPROVED AS TO FORM

County Counsel

By [Signature]

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPLICATE**

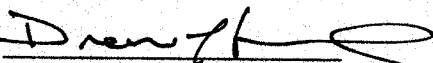


**Signature Page of Owner for Agreement for the
Construction of Sewer System Improvements**

"CONTRACTOR"

HONZEL DEVELOPMENT, LLC,
an Oregon limited liability company

By: Honzel Limited Partnership,
an Oregon limited partnership
Its: Sole Member

By: 
Drew Honzel, General Partner

ACKNOWLEDGMENT

STATE OF OREGON

COUNTY OF Klamath

This instrument was acknowledged before me on 7-24-13 (date) by
Drew Honzel (name(s) of person(s)) as General Partner (type of authority, e.g., officer, trustee,
etc.) of Honzel Limited Partnership. (name of party on behalf of whom instrument was executed)

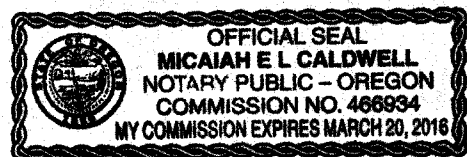
Micaiah E.L. Caldwell

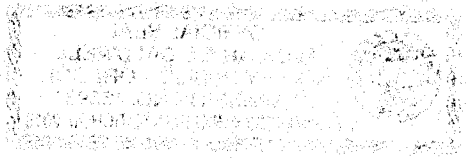
NOTARY PUBLIC

Print Name: Micaiah E.L. Caldwell

My Commission Expires:

3-20-16





The address is 55 Avenue 16

**AGREEMENT
FOR THE PLACEMENT OF SURVEY MONUMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and Honzel Development LLC, an Oregon limited liability company, hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Parcel Map 34159, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to set, within 48 months from the date this agreement is executed, in a good and workmanlike manner, all survey monuments and tie points and to furnish to the County Surveyor tie notes for said tract in accordance with the standards set forth in Riverside County Ordinance No. 461 and Section 8771 et seq. of the Business and Professions Code of the State of California. Contractor further agrees to pay, within 30 days of presentation to contractor of the final billing of any surveyor or engineer for work performed by him as provides for in Article 9 of Chapter 4, Division 2 of Title 7 of the Government Code of the State of California (commencing with Section 66495). Contractor further agrees that if payment to the surveyor or engineer is not made within 30 days, the surveyor or engineer notifies County that he has not been paid for setting the final monuments, and the Board of Supervisors, pursuant to Section 66497 of the Government Code, after providing Contractor with an opportunity to present evidence as to whether or not the surveyor or engineer has been paid, orders that payment be made by County to the engineer or surveyor, Contractor will, upon demand, and without proof of loss by County, reimburse County for any funds so expended. Notwithstanding any other provisions herein, the determination of County as to whether the surveyor or engineer has been paid shall be conclusive on Contractor, his surety, and all parties who may have an interest in the agreement or any portion thereof.

All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Surveyor, and shall not be deemed complete until approved and accepted as complete by the County. The estimated cost of said work and improvements is the sum of One hundred forty-seven thousand and no/100 Dollars (\$147,000.00).

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the County Surveyor. Contractor further agrees that, if suit is brought upon this agreement or any bond or other security guaranteeing the completion of the monuments, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, his agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, his agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, the Surety upon any bond or other security, and to the agents, employees and contractors of either of them, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the monumentation. This permission shall terminate in the event that Contractor or the Surety has completed work within the time specified or any extension thereof granted by the County. It is further agreed that Contractor shall have control of the ground reserved for the installation of said work, and the streets in which they are to be placed, as is necessary to allow him to carry out this agreement.

FIFTH: Contractor agrees to file with County prior to the date this contract is executed, an acceptable and sufficient improvement security in an amount not less than the estimated cost of the work, as above specified, for the faithful performance of the terms and conditions of this agreement, and for the payment of the amount of the improvement security to the County for the benefit of any surveyor or engineer who has not been paid by the Contractor, as provided for by Section 66495 et seq. of the Government Code of the State of California. Contractor agrees to renew each and every said bond or other security with good and sufficient sureties or increase the amount of said bonds or other security, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, he shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

SIXTH: Whenever a lien agreement is used as security under the provisions of Government Code Section 66499 (a) (4) and Riverside County Ordinance 460 § 17.3, Contractor agrees, prior to commencing the work, to substitute the lien agreement with a good and sufficient improvement bond or other security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and a good and sufficient security for the payment of the amount of the improvement security to the County for the benefit of any surveyor or engineer who has not been paid by the Contractor, as provided for by Section 66495 et seq. of the Government Code of the State of California.

SEVENTH: If contractor neglects, refuses, or fails to prosecute the work as to insure its completion within the time specifies, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, he shall be in default of this agreement. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor in such agreement, but said termination shall not affect or terminate any of the rights of County as against Contractor or his Surety then existing or which thereafter accrue because of such default. The determination of the County Surveyor of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, his Surety, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds or other security securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds or other security. Contractor further agrees to maintain the aforesaid bonds or other security in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

NINTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

TENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County
Construction Engineer
Riverside County Transportation Dept.
2950 Washington Street
Riverside, CA 92504

Contractor
Honzel Development, LLC
12929 S.W. Forest Meadows Way
Lake Oswego, OR 97034

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

By see attached signature page

Title _____

By _____

Title _____

COUNTY OF RIVERSIDE

By Jeff Stone
JEFF STONE

ATTEST: **CHAIRMAN, BOARD OF SUPERVISORS**

KECIA HARPER-IHEM,
Clerk of the Board

By Kellie Dutton
Deputy

APPROVED AS TO FORM

County Counsel

By [Signature]

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPPLICATE**

Revised 02/02/10

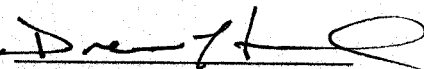


**Signature Page of Owner for Agreement for the
Placement of Survey Monuments**

"CONTRACTOR"

HONZEL DEVELOPMENT, LLC,
an Oregon limited liability company

By: Honzel Limited Partnership,
an Oregon limited partnership
Its: Sole Member

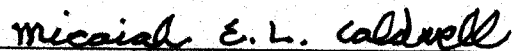
By: 
Drew Honzel, General Partner

ACKNOWLEDGMENT

STATE OF OREGON

COUNTY OF Klamath

This instrument was acknowledged before me on 7-24-13 (date) by
Drew Honzel (name(s) of person(s)) as General Partner (type of authority, e.g., officer, trustee,
etc.) of Honzel Limited Partnership. (name of party on behalf of whom instrument was executed)



NOTARY PUBLIC

Print Name: Micaiah E. L. Caldwell

My Commission Expires:

3-20-16

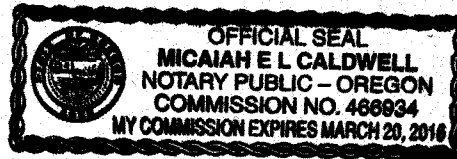


EXHIBIT "A"

Parcel Map 34159

Addressing CVWD's Interference Concerns

	CVWD's Concern	Resolution
1	If the parcel map records as-is, it would allow parcels to be sold and the street lots to be transferred to a Property Owners Association as required by the County of Riverside's conditions of approval.	The County's lien (unencumbered) expressly prohibits the sale of individual parcels until bonds are obtained to guarantee the completion of the improvements.
2	Easements for street and public utility purposes are dedicated over said Laterals and easements and will unreasonably interfere with the Laterals and their easements.	None of the grading, street, sewer, water, dry utility or storm drain improvements within the existing CVWD easements can be constructed without an encroachment permit from CVWD. As no development activities can occur until water and sewer systems are provided, CVWD will have no impacts to the operation of its channel until such time that it approves such water and sewer systems.
3	A portion of proposed Aviation Road is adjacent to the Thermal Drain and Stormwater Channel. CVWD requested the developer to be required to install suitable facilities to prohibit access to this right-of-way.	Improvement plans have been prepared to underground the existing open channel facility into a box culvert and the plans have been processed through CVWD. In addition, Aviation Road has been redesigned around the CVWD fee parcel and provides access to the existing open channel facility within the CVWD fee parcel.
4	Existing Bureau of Reclamation and District facilities are not shown on the development plans.	All easements of record as listed in the preliminary title report for the parcel map have been plotted and noted on the map.
5	Irrigation laterals are to be abandoned and the Bureau abandonment application must be submitted by the owner/developer.	The developer has agreed in writing to submit the application to abandon the easements prior to the issuance of the first building permit because the facilities are still in use and would not be relocated until development takes place.

Note:

A notation was placed on each sheet of the map and the environmental constraint sheet stating that no water or sewer disposal systems are available for this land division as of the date of recordation of this map and issuance of grading or construction permits is not allowed until water and sewage disposal systems are provided.



VICINITY MAP

PM-34159

SEC. 16 TWP. 6S RNG. 8E

Supervisory District: 4 (John Benoit)

Barton, Karen

From: Chase, Valerie
Sent: Monday, July 28, 2014 12:15 PM
To: Barton, Karen
Subject: Fwd: Desert Cities Industrial Park
Attachments: BOR 072814 Ltr - Desert Cities Industrial Park.pdf; ATT00001.htm

FYI. :)

Valerie Chase
Legislative Assistant to
Supervisor Jeff Stone
Sent from my iPhone

Begin forwarded message:

From: "Flores, Cynthia" <cflores@usbr.gov>
Date: July 28, 2014 at 11:48:10 AM PDT
To: <district1@rcbos.org>, <district2@rcbos.org>, <district3@rcbos.org>, <district4@rcbos.org>, <district5@rcbos.org>
Subject: Desert Cities Industrial Park

Please find attached for public record the Bureau of Reclamation's letter regarding Final Parcel Map 34159, agenda item No. 2-19 for tomorrow's Board of Supervisors meeting.

If you have any questions, please call me at the numbers below.

Thank you,

Cindy M. Flores
Manager, Water and Lands Contracts Group
Bureau of Reclamation
Yuma Area Office
7301 Calle Agua Salada
Yuma, AZ 85364
928-343-8261 (office)
928-276-2140 (cell)
cflores@usbr.gov





United States Department of the Interior

BUREAU OF RECLAMATION

Lower Colorado Region
Yuma Area Office
7301 Calle Agua Salada
Yuma, AZ 85364

JUL 28 2014

IN REPLY REFER TO:

YAO-7100
LND-6.00

The Honorable John Benoit
County of Riverside, 4th District
73-710 Fred Waring Drive, Suite 222
Palm Desert, CA 92260

Subject: Desert Cities Industrial Park (Final Parcel Map No. 34159) – All-American Canal System, Coachella Branch – Boulder Canyon Project

Dear Supervisor Benoit:

We understand the Riverside County Board of Supervisors will be considering approval of Final Parcel Map 34159 at its July 29, 2014, meeting (agenda item 2-19). We would like this communication to be a matter of public record in your consideration of an approval decision.

The Coachella Valley Water District (CVWD) is under contract with the United States for the operation and maintenance of the system of works related to the Coachella Canal, and as such is the Bureau of Reclamation's managing partner for the federal land interests and facilities. It has come to our attention that the proposed development of the Desert Cities Industrial Park (DCIP) will cause unreasonable interference with the operation and maintenance of Reclamation's and CVWD's easements and facilities. It is imperative that any interference with these easements and facilities be properly mitigated to the satisfaction of CVWD and Reclamation.


In lieu of immediate mitigation and in an effort to avoid further delay, it is our understanding that CVWD and the DCIP representatives are developing an "Agreement Regarding Real Property" (Agreement) which will provide for the necessary mitigation activities, but the terms of that Agreement have not yet been fully agreed upon. We respectfully request the Riverside County Board of Supervisors suspend approval of Final Parcel Map 34159 until such time as the aforementioned Agreement is finalized and executed. This will serve to protect future purchasers within the DCIP. Because Reclamation must take such actions as are necessary to protect the interests of the United States, if interference with the easements and facilities is not properly mitigated now, or at a minimum provided for in the Agreement, the burden of the resolution of these issues will fall upon the future purchasers of property within the DCIP.

We encourage the DCIP representatives to work with the CVWD to resolve the outstanding issues, and will provide any assistance necessary to the extent of our authority. In the interim, we again request the Riverside County Board of Supervisors suspend approval of Final Parcel Map 34159.

In closing, Reclamation is proud of its cooperative efforts over the years assisting Riverside County and local landowners to facilitate and assist in community development. We look forward to continued collaboration and cooperation.

Sincerely,

Acting For



Maria Ramirez
Area Manager

cc: Supervisor Kevin Jeffries
County of Riverside
4080 Lemon Street, 5th Floor
Riverside, CA 92501

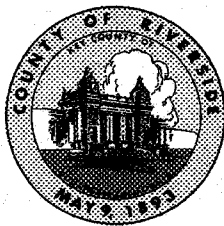
Supervisor John Tavaglione
County of Riverside
4080 Lemon Street, 5th Floor
Riverside, CA 92501

Supervisor Jeff Stone
County of Riverside
4080 Lemon Street, 5th Floor
Riverside, CA 92501

Supervisor Marion Ashley
County of Riverside
4080 Lemon Street, 5th Floor
Riverside, CA 92501

Mr. Jim Barrett
General Manager
Coachella Valley Water District
P.O. Box 1058
Coachella, CA 92236

MEMORANDUM



RIVERSIDE COUNTY COUNSEL

October 15, 2009

TO: KAMRYN SANCHEZ
Planning Tech III

FROM: LARISA REITHMEIER-MCKENNA *LRM*
Deputy County Counsel

RE: PM 34159
Honzel Thermal

We have reviewed the Sample Grant Deed and Declaration of Covenants, Conditions, and Restrictions for (CC&R's) for PM. 34159 submitted by Matthew R. Fogt of Allen Matkins Leck Mallory & Natsis LLP. As forwarded herewith, the documents are **APPROVED**.

Accordingly, the requirement for the Declaration of CC&R's for Tract No(s). is **SATISFIED**.

Enclosures

cc: Matthew R. Fogt
via e-mail at mfogt@allenmatkins.com

G:\Property\TRondilone\CC&R and SUP\CC&R\PM 34159 Approval memo.doc

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
1900 Main Street, Fifth Floor
Irvine, California 92612

Attention: Michael Joyce, Esq.

(Space Above For Recorder's Use)

DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
DESERT CITIES INDUSTRIAL PARK

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS.....	2
1.1 "Annexable Property.....	2
1.2 "Architectural Committee"	2
1.3 "Articles" and "Bylaws".....	2
1.4 "Assessments"	2
1.5 "Association"	2
1.6 "Association Rules"	3
1.7 "Board"	3
1.9 "Common Area	3
1.10 "Common Retention Basins.....	3
1.11 "Common Expenses"	3
1.12 "Condominium Project	4
1.13 "County"	4
1.14 "Covered Property.....	4
1.15 "Declarant"	4
1.16 "Design Guidelines".....	4
1.17 "Exhibit"	4
1.18 "Final Design Manual"	5
1.19 "Hazardous Material".....	5
1.20 "Improvements"	5
1.21 "Laws".....	5
1.22 "Lot	5
1.23 "Member".....	6
1.24 "Moat System.....	6
1.25 "Mortgage".....	6
1.26 "Mortgagee".....	6
1.27 "Net Usable Area".....	6
1.28 "Occupant"	6
1.29 "Owner"	6
1.30 "Permittee"	7
1.31 "Public Park".....	7
1.32 "Sub-Association"	7
ARTICLE II MEMBERSHIP.....	7
2.1 Membership	7
2.2 Transfer	7
2.3 Classes of Voting Membership.....	7
2.4 Approvals and Consents	8
ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS.....	8

	<u>Page</u>
3.1	Creation of the Lien and Personal Obligation of Assessments..... 8
3.2	Purpose of Assessments..... 9
3.3	Regular Assessments 9
3.4	Allocation of Assessment 9
3.5	Certificate of Payment 9
3.6	Exempt Property 9
3.7	Special Assessments 10
3.8	Date of Commencement of Assessments..... 10
3.9	Capital Improvement Assessments 10
3.10	No Offsets 10
3.11	Reserves 11
ARTICLE IV	NONPAYMENT OF ASSESSMENTS..... 11
4.1	Delinquency 11
4.2	Notice of Lien 11
4.3	Foreclosure Sale..... 12
4.4	Curing of Default 12
ARTICLE V	ARCHITECTURAL CONTROL 12
5.1	Declarant is the Architectural Committee..... 12
5.2	Appointment of Architectural Committee 12
5.3	Design Guidelines 12
5.4	General Provisions 13
5.5	Approval and Conformity of Plans 13
5.6	Drain Tiles, On-Site Retention and the Moat System..... 14
5.7	Subterranean Improvements 15
5.8	Compliance with Laws 15
5.9	Completion of Work 15
ARTICLE VI	DUTIES AND POWERS OF THE ASSOCIATION..... 16
6.1	General Duties and Powers..... 16
6.2	General Duties of the Association 16
6.3	General Powers of the Association..... 16
6.4	Association Rules..... 16
6.5	Delegation of Powers..... 17
6.6	Pledge of Assessment Rights..... 17
6.7	Emergency Powers..... 17
6.8	Conveyance of Common Area..... 17
ARTICLE VII	REPAIR AND MAINTENANCE 18
7.1	Repair and Maintenance by Association..... 18
7.2	Repair and Maintenance by Owner..... 19
7.3	Right of Association to Maintain and Install 20

	<u>Page</u>
7.4 Standards for Maintenance and Installation.....	20
7.5 Right of Entry	21
7.6 Maintenance of Public Utilities	21
ARTICLE VIII INSURANCE.....	21
8.1 Duty to Obtain Insurance; Types	21
8.2 Right and Duty of Owners to Insure	21
8.3 Notice of Expiration.....	22
8.4 Premiums	22
8.5 Trustee for Policies	22
8.6 Actions as Trustee.....	23
8.7 Required Waiver	23
ARTICLE IX DESTRUCTION OF IMPROVEMENTS	23
9.1 Duty of Association	23
9.2 Automatic Reconstruction	24
9.3 Excess Insurance Proceeds	24
9.4 Use of Reconstruction Assessments	24
9.5 Destruction of Owner's Improvements	24
ARTICLE X EMINENT DOMAIN	24
10.1 Definition of Taking	24
10.2 Representation by Association in Condemnation Proceedings	24
10.3 Award for Takings	24
10.4 Condemnation of Owner's Improvements	24
10.5 Reallocation Following Condemnation	25
ARTICLE XI USE RESTRICTIONS.....	25
11.1 Permitted Uses	25
11.2 Prohibited Uses	25
11.3 Animals.....	26
11.4 Mineral Exploration.....	26
11.5 Other Operations and Uses	26
11.6 Nuisances	26
11.7 Signs.....	27
11.8 Temporary Structures.....	27
11.9 Vehicles.....	27
11.10 Unsightly Items.....	28
11.11 Antennae and Other Roof Structure.....	28
11.12 Window Covers	28
11.13 Drainage.....	28
11.14 Sewage and Water System.....	28
11.15 Hazardous Material.....	29

	<u>Page</u>
11.17 Outside Storage.....	31
11.18 Use of the Common Area	31
11.19 Airport Land Use Commission Restrictions.....	31
ARTICLE XII EASEMENTS	31
12.1 Amendment to Eliminate Easements	31
12.2 Nature of Easements	31
12.3 Certain Rights and Easements Reserved to Declarant.....	31
12.4 Certain Easements for Owners.....	32
12.5 Certain Easements for Association	33
12.6 Support, Settlement and Encroachment.....	33
ARTICLE XIII RIGHTS OF LENDERS	33
13.1 Filing Notice; Notices and Approvals.....	33
13.2 Priority of Mortgage Lien	34
13.3 Curing Defaults.....	34
13.4 Resale.....	34
13.5 Relationship with Assessment Liens	34
13.6 Other Rights of Mortgagees.....	34
13.7 Mortgagees Furnishing Information	35
13.8 Conflicts.....	35
ARTICLE XIV PROTECTION OF THE PROJECT FROM LIENS	35
14.1 Association to Defend Certain Actions.....	35
14.2 Payment of Lien.....	35
14.3 Owners to be Specially Assessed.....	35
14.4 Reimbursement by Certain Owners	35
ARTICLE XV GENERAL PROVISIONS	36
15.1 Enforcement.....	36
15.2 No Waiver.....	36
15.3 Cumulative Remedies	36
15.4 Severability	36
15.5 Covenants to Run with the Land; Term.....	36
15.6 Construction.....	37
15.7 Singular Includes Plural.....	37
15.8 Nuisance.....	37
15.9 Attorney's Fees.....	37
15.10 Notices	37
15.11 Effect of Declaration.....	37
15.12 Personal Covenant	38
15.13 Nonliability of Officials.....	38
15.14 Leases.....	38

	<u>Page</u>
15.15 Construction by Declarant	38
15.16 Amendments	38
15.17 Nondiscrimination.....	39
15.18 Nondiscrimination Clauses	39
15.19 Declarant's Rights and Reservations.....	40
 ARTICLE XVI ANNEXATION	 41

EXHIBITS:

"A"	Legal Description of Covered Property
"B"	Legal Description of Annexable Property
"C"	Map of the Common Area
"D"	Identification of the Net Usable Area
"E"	Final Design Manual
"F"	Declaration of Annexation

DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
DESERT CITIES INDUSTRIAL PARK

THIS DECLARATION ("**Declaration**") is made this ___ day of _____, 20___, by HONZEL DEVELOPMENT, LLC, an Oregon limited liability company ("**Declarant**").

R E C I T A L S :

A. Declarant is the fee owner of the real property located in an unincorporated area of Riverside County as more particularly described in Exhibit "A" to this Declaration. This Declaration is being imposed by Declarant upon the Covered Property defined in **Section 1.14** below.

B. The Covered Property is being developed as the Desert Cities Industrial Park. Declarant has deemed it desirable to establish certain master covenants, conditions, restrictions and easements upon each and every portion of the Covered Property, which will constitute a general scheme for the maintenance, management and development on an integrated basis of the Covered Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property.

C. It is desirable for the efficient management of the Covered Property and the preservation of the value, desirability and attractiveness of the Covered Property to create a corporation to which shall be delegated and assigned the powers of managing and administering certain portions of the Covered Property and administering and enforcing these covenants, conditions, restrictions and easements and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to, and to perform such other acts as shall generally benefit the Covered Property.

D. Desert Cities Industrial Park Owners' Association, a nonprofit mutual benefit corporation, will be incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid.

E. Declarant will hereafter hold and convey title to all of the Covered Property subject to certain protective covenants, conditions, restrictions and easements hereafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of the interests in the Covered Property, and the owners of said interests, their successors and assigns. These covenants, conditions, restrictions and easements shall run with said interests and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each owner

thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

ARTICLE I **DEFINITIONS**

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

1.1 "Annexable Property" shall mean and refer to the real property described in **Exhibit "B"** attached hereto.

1.2 "Architectural Committee" shall mean and refer to the committee or committees provided for in Article V hereof, entitled "Architectural Control."

1.3 "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended. In the event of any conflict between the Articles, the Bylaws and this Declaration, the provisions of this Declaration shall control.

1.4 "Assessments" The following meanings shall be given to the Assessments hereinafter defined:

"Regular Assessment" shall mean the amount which is to be paid by each Owner to the Association for Common Expenses.

"Special Assessment" shall mean a charge against a particular Owner and such Owner's Lot, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and such Owner's Lot into compliance with the provisions of this Declaration, the Articles, Bylaws or Association Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

"Capital Improvement Assessment" shall mean a charge against each Owner and each Owner's Lot, representing a portion of the cost to the Association for the Improvements and/or replacement of any Improvements or any landscaping located within or making up a part of the Common Area which the Association may reasonably authorize from time to time pursuant to the terms of this Declaration and in furtherance of the purposes hereof for the improvement and benefit of the Covered Property.

"Reconstruction Assessment" shall mean a charge against each Owner and each Owner's Lot, representing a *pro rata* portion of the cost to the Association for the reconstruction of any Improvements located within the Common Area.

1.5 "Association" shall mean and refer to Desert Cities Industrial Park Owners' Association, a nonprofit mutual benefit corporation, incorporated under the laws of the State of California, its successors and assigns.

1.6 "Association Rules" shall mean rules adopted by the Association pursuant to Article VI hereof, entitled "Duties and Powers of the Association".

1.7 "Board" shall mean the Board of Directors of the Association.

1.8 "Building" shall mean any structural improvement on any Lot which is enclosed by exterior walls and a roof and is designed for the conduct within of activities and business by the Owner of such Lot, or such Owner's licensees, tenants, successors or assigns.

1.9 "Common Area" shall consist of all portions of the Covered Property designated as such in **Exhibit "C"** attached hereto, consisting of landscaping, entry monuments, street, curbs, gutters, sidewalks, the Public Park and drainage facilities, including, without limitation, the Moat System and Common Retention Basins. Common Area shall also include those other areas designated from time to time by Declarant until such time that Declarant no longer has a Class B Board appointment right as set forth in Section 2.3(b) hereof.

1.10 "Common Retention Basins" shall mean those retention basins designated as such in **Exhibit "C"** attached hereto, which are designed to accept stormwater runoff from adjacent properties, the Common Area, and the Covered Property, except that all runoff from any Lot shall be retained on such Lot prior to the date vertical Improvements are constructed on such Lot (i.e., an onsite retention basin or another system for on-site retention must be constructed prior to the development of any Lot, as further set described in Section 5.6(b) hereof).

1.11 "Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) maintenance, management, operation and/or repair of the Common Area and/or all other areas within the Covered Property which are or may be maintained by the Association;

(b) reasonable management fees, plus actual, out-of-pocket costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants (including the costs of audits and related financial statements and reports with respect to the Association's books and records), attorneys, consultants and employees and to any individual or entity retained by the Association, including without limitation, Declarant, for purposes of performing and discharging the Association's duties as set forth in Article VI hereof, entitled "Duties and Powers of the Association";

(c) the costs of utilities, erosion and flood control, pest control, irrigation, gardening and other services for the Common Area, and which are not separately paid by Lot Owners;

(d) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Area;

(e) the costs of any other insurance obtained by the Association, including liability insurance for members of the Board and Architectural Committee;

- (f) reasonable reserves as deemed appropriate by the Board;
- (g) the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;
- (h) taxes paid by the Association;
- (i) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area;
- (j) costs incurred by committees established by the Board in accordance with this Declaration and the Bylaws;
- (k) costs for security services for the Covered Property;
- (l) unpaid Regular Assessments; and
- (m) other expenses incurred by the Association for any reason whatsoever in connection with the Common Area or the costs of any other item or items designated by this Declaration, the Articles, Bylaws or Association Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

"Common Expenses" shall specifically exclude costs related to the initial capital improvements.

1.12 "Condominium Project" shall mean a development project consisting of condominiums as defined in California Civil Code Section 1351(f).

1.13 "County" shall mean the County of Riverside; provided, however, in the event the Covered Property is annexed into a City, all references herein shall refer to the applicable City.

1.14 "Covered Property" shall mean and refer to all the real property described in **Exhibit "A"** attached hereto and any Annexable Property later annexed to the initial Covered Property pursuant to the terms and provisions of Article XVI hereof.

1.15 "Declarant" shall mean and refer to Honzel Development, LLC, an Oregon limited liability company and to any person, partnership, corporation or association, whether owned in whole or in part and whether controlled directly or indirectly by the Declarant, to whom the Declarant may assign in writing its rights under this Declaration.

1.16 "Design Guidelines" shall mean and refer any and all design guidelines adopted by the Architectural Committee and approved by the Board, plus, in its entirety, the Final Design Manual. In the event of a conflict between any design guidelines approved by the Board and the provisions of the Final Design Manual, the latter shall control.

1.17 "Exhibit" shall mean and refer to those documents so designated herein and attached hereto and each such Exhibits is by this reference incorporated in this Declaration.

1.18 "Final Design Manual" shall mean that certain Design Manual Desert Cities Industrial Park PM 34159 attached hereto as **Exhibit "E"** as amended from time to time, which was approved by the County Board of Supervisors in conjunction with its approval of PM 34159 for the Covered Property. The Final Design Manual can not be amended, changed or altered without the explicit approval of Riverside County.

1.19 "Hazardous Material" shall mean any oil, flammable explosive, asbestos, urea formaldehyde, radioactive material, vapor, solvent, or waste, contaminated or polluting materials, hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste", under Sections 25115, 25117 or 15122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22, of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903), or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 6901).

1.20 "Improvements" shall mean and include structures and construction of any kind, whether above or below the land surface, including but not limited to, Buildings, outbuildings, walls, water lines, sewers, drainage facilities, electrical and gas distribution facilities, parking facilities, security facilities, walkways, fences, hedges, mass plantings, poles, signs and any other structures of any type or kind.

1.21 "Laws" shall mean any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Material, whether in effect as of the date hereof or hereinafter enacted including, without limitation, Proposition 65 of the State of California, California Assembly Bill 3713 and the laws, ordinances, and regulations referred to in the definition of "Hazardous Material."

1.22 "Lot" shall mean each of the separate legal parcels shown or described on **Exhibit "A"** attached hereto, exclusive of any legal parcels created for streets and any legal parcel owned by the Association and constituting part of the Common Area. "Lot" also shall mean and refer to any lot shown on any final map which is hereafter filed for record or any parcel shown on any tract or parcel map filed for record to the extent such lot is part of the Covered Property.

1.23 "Member" shall mean and refer to every person or entity who qualifies for membership pursuant to Article II of this Declaration entitled "Membership", including Declarant so long as Declarant qualifies for membership pursuant to said Article.

1.24 "Moat System" shall mean those moats designated as Common Area in **Exhibit "C"** attached hereto, which are designed to accept stormwater runoff from adjacent undeveloped properties, the Common Area and interior streets dedicated to the County. The Moat System is not intended to accept any post-development stormwater runoff or discharge from any Lot and all such runoff or discharge shall be retained on site, as further set forth herein. Upon the development of the adjacent undeveloped properties the Moat System is designed to service, portions of the Moat System may become obsolete and such portions may be decommissioned and removed upon approval from the County and/or other governmental and quasi-governmental agencies with regulatory authority over stormwater runoff.

1.25 "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot. A "First Mortgage" shall refer to a Mortgage which has priority over any other Mortgage encumbering a specific Lot.

1.26 "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall mean the holder of a Mortgage that has priority over any other Mortgage encumbering a Lot.

1.27 "Net Usable Area" shall mean and refer to the square footage applicable to each Lot, as identified on **Exhibit "D"** attached hereto. The numbers and percentages provided in **Exhibit "D"** shall be conclusive evidence of the Net Usable Area of a Lot, despite actual variations. If a Lot is later subdivided, two or more Lots are merged, a lot line adjustment is recorded involving two or more Lots, the Net Usable Area of such Lots impacted by such action shall be adjusted proportionately, without impact to the Net Usable Area of the other Lots not impacted by such action.

1.28 "Occupant" shall mean those persons entitled by ownership, leasehold interest or other legal relationship to the right to occupy any portion of the Covered Property or the Improvements.

1.29 "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. In the event that the ownership of any Building or other Improvements on any portion of the Covered Property shall ever be severed from the land, whether by lease or by deed, only the owner of the interest in the land shall be deemed an Owner hereunder. An Owner shall not necessarily be an Occupant. The owner of the fee title and not the lessee of a Lot shall be deemed the Owner regardless of the term of any lease; provided, however, that Declarant hereby reserves the right to have any lessee who has leased any Lot(s) owned by Declarant for a period of twenty-five (25) years or more to be considered the "Owner" of such Lot(s) for purposes of this Declaration. Notwithstanding the foregoing, an Owner may designate a lessee of such Owner's Lot to be considered the "Owner" of such Lot for the purposes of this Declaration provided that the fee owner of such Lot provides the Association

with written evidence of such designation. Such designation may be revoked by the fee owner of such Lot at any time by providing the Association written notice of such revocation.

1.30 "Permittee" shall mean Declarant, any other Owner or Occupant, and their respective partners, officers, directors, employees, agents, patrons, guests, invitees, contractors, visitors, lessees, licensees and representatives.

1.31 "Public Park" shall mean the public park within the covered property shown on **Exhibit "C"** attached hereto, which will be dedicated to the County on the final map filed for the Covered Property.

1.32 "Sub-Association" shall mean any association established for the management of the common area of a Condominium Project within the Covered Property.

ARTICLE II **MEMBERSHIP**

2.1 **Membership.** Every Owner shall be a Member. The terms and provisions set forth in this Declaration which are binding upon all Owners are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws and Association Rules to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights, if any, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. One membership shall exist for each Owner irrespective of the number of Lots owned by an Owner.

2.2 **Transfer.** The membership held by any Owner shall not be transferred, pledged or alienated in any way, except membership shall automatically be transferred to an Owner which shall acquire all of another Owner's right, title and interest of an Owner within the Covered Property. Any attempt to make a prohibited transfer is *ab initio* void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner. The Association shall have the right to impose a reasonable fee to cover the cost of documentation and clerical services incurred with respect to the transfer of ownership interests on the books and records of the Association. Notwithstanding any other provision of this Declaration an Owner's right to vote shall not vest until such transfer fee has been paid.

2.3 **Classes of Voting Membership.** The Association shall have two (2) classes of voting membership as set forth below.

(a) **Class A Members.** Class A Members shall be all Owners. Each such Owner shall be entitled to vote that percentage of the total votes available to all Members (such total being deemed to be 100) reflected by the ratio that the Net Usable Area of all Lots owned by a Member bears to the total Net Usable Area of all Lots in the Covered Property. If there is more than one Owner of a Lot, the voting rights for each Lot may not be cast on a fractional basis. If the joint Owners of a Lot are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the

matter in question. If any Owner casts a vote representing his Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. Any votes cast in violation of this provision shall be null and void. In the event a portion of the Covered Property is legally subdivided for the purpose of creating Condominiums, the Sub-Association for the applicable Condominiums shall be entitled to vote on behalf of the owners of such Sub-Association through the Sub-Association's board of directors, the number of votes determined pursuant to the provisions above (i.e., the Net Usable Area of the Lot(s) on which the Condominiums are located).

(b) Class B Board Appointment Right. Declarant shall have a Class B Board appointment right (whether or not Declarant is an Owner). The Class B Board appointment right shall not be considered a part of the voting power of the Association. The Class B Board appointment right entitles Declarant to select a majority of the members of the Board until Declarant no longer owns any Lots or the Annexable Property. Board Members appointed by Declarant pursuant to Declarant's Class B membership do not have to be Owners.

2.4 Approvals and Consents. Any provision of this Declaration or the Bylaws which requires the vote or written consent of a specified majority of the voting power of the Association shall be deemed satisfied by the following:

(a) the vote of the specified percentage at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members. Such percentage must include the specified number of all Members entitled to vote at such meeting and not such a percentage of those Members present;

(b) written consents signed by the specified percentage of Members as provided in the Bylaws; and

(c) in any matter requiring the consent of the Members, but not specifically provided for in this Declaration or the Articles, Bylaws or any contract executed by the Association, a simple majority of the voting power of Members entitled to vote on such matters shall suffice, except that Section 2.3(b) shall not be amended or eliminated without the prior written consent of the Declarant, which consent may be given or withheld in Declarant's sole and absolute discretion.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner including the Declarant to the extent Declarant is an Owner as defined herein, of any Lot by acceptance of a deed or other conveyance, creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Capital Improvement Assessments, Reconstruction Assessments and Special Assessments, such Assessments to be fixed, established and collected from time to time as provided in this

Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due and such personal obligation to pay the Assessment shall not be terminated by a conveyance or any transfer of an Owner's interest in such lot necessary to be deemed an Owner hereunder. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

3.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Members, the management of the Covered Property, enhancing and protecting the value, desirability and attractiveness of the Covered Property and the quality of environment within the Covered Property, including, without limitation, the improvement maintenance, and administration of the Common Area, administering and enforcing these covenants, conditions, restrictions and easements, collecting and disbursing funds pursuant to this Declaration or in furtherance of any other duty or power of the Association.

3.3 Regular Assessments. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board shall distribute to each Member a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Regular Assessment to be paid by each Member. Each Member shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. Each such installment shall be due and payable on the date established by the Board in the written notice sent to Members. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due.

3.4 Allocation of Assessment. Regular Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be borne proportionately by each Owner according to the Net Usable Area of such Owner's Lot as set forth in Exhibit "D".

3.5 Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates.

3.6 Exempt Property. Except for lettered Lots and Common Area Lots shown on the Final Map and later conveyed or dedicated by Declarant to the Association, the County or another governmental or quasi-governmental agency, no property dedicated to and accepted by, or otherwise owned or acquired by, a public authority or the Association shall be exempt from

the Assessments created herein unless the deed or other instrument of conveyance from Declarant shall expressly so exempt such public authority or the Association.

3.7 Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for (or as otherwise provided herein):

- (a) costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules;
- (b) any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules;
- (c) attorneys' fees, interest and any other charges relating thereto as provided in this Declaration; and
- (d) any extraordinary or disproportionate cost or expense incurred by the Association in the maintenance, management, operation and/or repair by the Association of the Common Area, due to the use by an Owner or Occupant of a Lot located within the Common Area in such a manner as to require such extraordinary or disproportionate cost, such as, but not by way of limitation, the use by such Owner of unusual, exotic or sensitive plants or landscaping materials on such Owner's Lot.

In the event the Association undertakes to provide materials or services which benefit individual Lots and which may be accepted at the election of individual Owners, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

3.8 Date of Commencement of Assessments. Notwithstanding anything to the contrary set forth in this Declaration, each Owner shall be responsible for the payment of all Regular Assessments, Special Assessments, Capital Improvement Assessments or Reconstruction Assessments from and after the date on which such Owner acquires title to such Lot. It is provided, further, that in the event the amount budgeted to meet Common Expenses for the then current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

3.9 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year, a Capital Improvement Assessment applicable to that year only, for the purposes described in **Section 1.4** hereof and for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of any Improvements installed by the Association within any portion of the Common Area for the benefit of the Covered Property, or any Improvement located within any legal parcel owned by the Association to the extent the same is not covered by the provisions covering Reconstruction Assessments in Article IX, entitled "Destruction of Improvements". All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall not be commingled with any other funds of the Association.

3.10 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including,

without limitation, as a result of a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; or (ii) a Member has made or elects to make no use of the Common Area.

3.11 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Area or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in separate interest bearing bank accounts to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE IV **NONPAYMENT OF ASSESSMENTS**

4.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said date (the "**delinquency date**"). If any such Assessment is not paid within thirty (30) days after delivery of notice of such delinquency from the Association, a late charge equal to ten percent (10%) of the Assessment shall be levied and the Assessment shall bear interest at the rate of ten percent (10%) per annum from the delinquency date, but in any event not higher than the maximum rate permitted by law. The Association may, at its option, and without waiving the right to judicially foreclose its lien against the Lot, pursue any available remedies, including, without limitation, bringing an action at law against the Owner personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in **Section 4.2** hereof, entitled "Notice of Lien", to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the cost of such action, and attorneys' fees incurred in connection with such action; and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all action at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent Assessments.

4.2 Notice of Lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder in Riverside County; said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed which shall include a late charge equal to ten percent (10%) of the unpaid Assessment and interest on the unpaid Assessment at the rate of ten percent (10%) per annum but in any event not higher than the maximum rate permitted by law, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien. Said late charges may be increased by the Board in its reasonable discretion not more frequently than annually based upon increases in the Consumer Price Index - All Urban Consumers (Los Angeles-Long Beach/Anaheim Area; Base: 1982-1984=100), as published by the United States Department of Labor, Bureau of Labor Statistics (the "**Index**").

4.3 Foreclosure Sale. Any Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized by the Board to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h of the Civil Code of the State of California as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using as a credit bid the amounts secured by such lien, Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same. The Board is hereby appointed as trustee of the applicable Lot(s) for purposes of noticing and effecting any sale pursuant to the provisions of this Article IV.

4.4 Curing of Default. Upon the timely payment or other satisfaction of:

- (a) all delinquent Assessments specified in the notice of claim of lien;
- (b) all other Assessments which have become due and payable with respect to the Lot as to which such notice of claim of lien was recorded; and
- (c) interest, late charges, attorneys' fees and other costs of collection pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee to cover the costs of preparing and filing or recording such release.

ARTICLE V

ARCHITECTURAL CONTROL

5.1 Declarant is the Architectural Committee. Until Declarant's Class B Board appointment right terminates pursuant to **Section 2.3(b)** hereof, all references herein to the Architectural Committee shall be deemed to refer to Declarant, or its designated representative(s).

5.2 Appointment of Architectural Committee. The Architectural Committee shall consist of one or more individuals, the number of whom shall be fixed from time to time by resolution of the Board. Persons appointed by the Board to the Architectural Committee must be Members. Notwithstanding the foregoing, members of the Board may also serve on the Architectural Committee. The Architectural Committee may consist entirely of members of the Board, or the Board may elect to eliminate the Architectural Committee, in which event the Board will be deemed to have assumed all duties and obligations of the Architectural Committee.

5.3 Design Guidelines. Declarant has adopted the Design Guidelines, which set forth general standards for the design and appearance of the Covered Property. The Design Guidelines are intended to provide design professionals, Owners and County staff with standardized design vocabularies and materials intended to preserve the quality and overall appearance of the Covered Property. However, in the event of any conflict between the Design

Guidelines and this Declaration, this Declaration shall control. The Design Guidelines, except that portion embodied in the Final Design Manual, may be amended pursuant to a vote of the majority of the Board. Notwithstanding the foregoing, no amendment to the Design Guidelines shall act to make any previously approved, constructed or installed Improvement or landscaping out of compliance with such amended Design Guidelines, provided that such Improvement or landscaping was in compliance with the applicable Design Guidelines prior to such amendment. The Architectural Committee shall retain a copy of the Design Guidelines on file at all times and shall provide each Owner with a copy of the Guidelines upon request.

5.4 General Provisions.

(a) Any member of the Architectural Committee or any officer, director, employee or agent of the Association at any reasonable time and after not less than twenty-four (24) hours notice, may enter, without being deemed guilty of trespass, upon any Lot and Improvements thereon after written notice to the Owner in order to inspect Improvements constructed or being constructed on such Lot to ascertain that such Improvements have been or are being built in compliance with the Design Guidelines.

(b) The address of the Architectural Committee shall be the principal office of the Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for the submittal of plans and specifications.

(c) The establishment of the Architectural Committee shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify or otherwise have control over the Lots as may otherwise be specified in this Declaration, in the Bylaws or in any Association Rules.

5.5 Approval and Conformity of Plans.

(a) No Improvements shall be erected, placed, altered, maintained or permitted to remain on any of the Covered Property unless such Improvements are consistent with the Design Guidelines and are approved in writing by the Architectural Committee. Notwithstanding the foregoing, Improvements constructed pursuant to plans approved in writing by the Architectural Committee may be maintained and permitted to remain on the Covered Property despite amendments to the Design Guidelines that cause such Improvements to be inconsistent with the amended Design Guidelines.

(b) The Architectural Committee may establish reasonable procedural rules and may assess a fee not to exceed One Thousand Five Hundred Dollars (\$1,500) (unless the Architectural Committee reasonably determines that such fee is insufficient to defray the expenses of a review in compliance with the provisions of this Article, in which event the Architectural Committee may impose an increased fee). Such fee shall be imposed with respect to any submission of plans in connection with review of plans and specifications including, without limitation, the number of sets of plans to be submitted. Such fee shall be subject to annual increases as reflected by the Index. The Architectural Committee may, however, delegate its plan review responsibilities to one or more members of such Architectural Committee. Upon such delegation, the approval or

disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules are complied with, such plans and specifications shall be deemed not submitted.

(c) In the event the Architectural Committee fails to approve or disapprove such plans and specifications in writing within thirty (30) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, such plans and specifications will be deemed approved only after further inaction by the Architectural Committee following fifteen (15) days from the delivery of written notice that the Architectural Committee failed to approve or disapprove such plans and specifications within the initial thirty (30) day period and that the Architectural Committee will be deemed to have approved such plans and specifications if it fails to disapprove same within such fifteen (15) day period following the delivery of such notice.

(d) Plans and specifications are not approved for engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

(e) In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board, in the event voting rights shall have become effective for the Members. The written request shall be received by the Board not more than thirty (30) days following the final decision of the Architectural Committee. The Board shall submit such request to the full Architectural Committee for review, whose written recommendations will be submitted to the Board. Within thirty (30) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said thirty (30) day period shall be deemed a decision in favor of the appellant. Prior to the date voting rights shall have become effective for the Members, any decision by the Architectural Committee shall be final.

5.6 Drain Tiles, On-Site Retention and the Moat System.

(a) A subsurface drain tile system exists on the Covered Property and other surrounding properties to ensure proper drainage and must be maintained as mitigation for potential liquefaction. Any disturbance or damage to the drain tile system must be repaired to maintain the integrity and effectiveness of the system. Any maintenance, repair and/or replacement of the drain tile system within the Common Area is the responsibility of the Association and shall be performed in a timely manner. Any maintenance, repair and/or replacement of the drain tile system within an Owner's Lot is the responsibility of the Owner and shall be performed in a timely manner. Should an Owner fail to timely perform any required maintenance, repair and/or replacement to the drain tile system on Owner's Lot, the Association may make or cause to be made such maintenance, repair and/or replacement at the Lot Owner's expense pursuant to the provisions of **Section 7.3 hereof.**

(b) Common Retention Basins and a Moat System will be developed to collect, convey and retain stormwater discharge from adjacent undeveloped properties and the Covered Property, but will not accept post-development stormwater discharge from any of the Lots following the development of such Lots, which Lots are each required to retain such discharge on the Lot generating the discharge prior to commencing construction of vertical Improvements on such Lot. Post-development discharge from any Lot into or onto another Lot or into or onto the Common Area, including, without limitation, the streets, Moat System and the Common Retention Basins is expressly prohibited. Once the adjacent properties serviced by the Moat System are developed and drainage systems for such adjacent properties are constructed, portions of the Moat System may become obsolete and could be decommissioned and removed at the Lot Owner's sole expense upon approval from the County or other applicable governmental or quasi-governmental agencies with jurisdiction over such systems. Upon such approval, the Association shall no longer have responsibility for the maintenance of such areas.

5.7 Subterranean Improvements. No Improvement in the Covered Property which will extend beneath the surface of the ground to a depth of more than forty eight (48) inches or which will disturb the existing drain tiles, the Moat System or other drainage system on the Covered Property shall be commenced unless plans and specifications thereof have been approved by the Architectural Committee, the County and other applicable governmental or quasi-governmental agencies with jurisdiction over such systems.

5.8 Compliance with Laws. All Improvements shall further be constructed in compliance with all applicable permits and authorizations, all building and zoning laws and all other laws, ordinances, orders, codes, rules, regulations and requirements of all federal, state, county, municipal governmental agencies and bodies having jurisdiction.

5.9 Completion of Work. After the commencement of the work with respect to any Improvements approved by the Architectural Committee in accordance with the terms hereof, such work shall be diligently prosecuted so that the Improvements shall not remain in a partly-finished condition any longer than reasonably necessary for the completion thereof. All construction shall be done so as to cause minimal interference with the business operations conducted from those Buildings already open for business and with the construction of Improvements on other Lots. During the construction, the construction site and surrounding areas shall be kept reasonably clean and free of construction material, trash and debris and appropriate precautions shall be taken to protect against personal injury and property damage to Declarant, other Owners and Occupants. With regard to excavation, and without limiting any other provision of this Declaration, no excavation shall be made on, and no sand, gravel, soil or other material shall be removed from the site, except in connection with the construction or alteration of Improvements approved in the manner set forth in this Article, and upon completion of any such operations, exposed openings shall be backfilled and disturbed ground shall be graded, leveled and paved or landscaped in accordance with the previously approved plans and specifications contemplated in this Article. After such completion of the Improvements, there shall not be any other material change in the aforesaid Improvements without prior approval in writing by the Board in the manner contemplated in this Article. Failure to comply with this Section shall constitute a breach of this Declaration and subject the defaulting party or parties to

all enforcement procedures set forth in this Declaration and any other remedies provided by law or equity.

ARTICLE VI
DUTIES AND POWERS OF THE ASSOCIATION

6.1 General Duties and Powers. In addition to the duties and powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

6.2 General Duties of the Association. The Association through the Board shall have the duty and obligation to enforce the provisions of this Declaration, the Articles, Bylaws, and Association Rules, by appropriate means and carry out the obligations of the Association hereunder.

6.3 General Powers of the Association. The Association through the Board shall have the power but not the obligation to:

- (a) employ a manager or other persons and contract with independent contractors or managing agents including without limitation Declarant, who have professional experience in the management of commercial developments similar to the Covered Property, to perform all or any part of the duties and responsibilities of the Association;
- (b) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the administration of the affairs of the Association or for the benefit of the Members;
- (c) borrow money as may be needed in connection with the discharge by the Association of its powers and duties;
- (d) establish in cooperation with the County a special tax assessment district for the construction of infrastructure facilities of the Covered Property or for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association, and the Owners shall be deemed to have consented to, and shall not oppose the formation of any such assessment district; and
- (e) assist governmental agencies or quasi governmental agencies in establishing guidelines and regulations for ridesharing, car pooling and van pooling within the Covered Property, for the purpose of reducing daily commuter trips. At the option of the Association, such guidelines and regulations shall provide for the establishment of a commuter bus line service or such other reasonable transportation modes.

6.4 Association Rules. The Association shall also have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (the "**Association Rules**") which may include the establishment of a system of fines and penalties enforceable as Special

Assessments, all as provided in the Bylaws. The Association Rules shall govern such matters in furtherance of the purposes of the Declaration; provided, however, that the Association Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

6.5 Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles and Bylaws; provided, however, no such delegation to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

6.6 Pledge of Assessment Rights. The Association shall have the power to pledge the right to exercise its Assessment powers in connection with obtaining funds to repay a debt of the Association; provided, however, that following the expiration of Declarant's Class B appointment right, any such pledge shall require the prior affirmative vote or written assent of not less than seventy percent (70%) of the Net Usable Area. Said power shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to or which will become payable to the Association; which assignment may be then presently effective but shall allow said Assessments to continue to be paid to and used by the Association as set forth in this Declaration, unless and until the Association shall default on the repayment of the debt which is secured by said assignment. The Association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay said Special Assessment when due, the Association may exercise all its rights, including, without limitation, the right to foreclose its lien, pursuant to Article IV hereof, entitled "Nonpayment of Assessments."

6.7 Emergency Powers. The Association or any person authorized by the Association may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused by the Association's negligence shall be repaired by the Association unless covered by insurance carried by the Owner.

6.8 Conveyance of Common Area. Unless otherwise dedicated or conveyed to the County or another governmental or quasi governmental agency, Declarant shall convey all lettered Lots and Common Area Lots to the Association and the Association shall accept such conveyance.

ARTICLE VII
REPAIR AND MAINTENANCE

7.1 Repair and Maintenance by Association. Except to the extent that an Owner may be obligated, or the County or another governmental or quasi-governmental agency has accepted the obligation to maintain and repair as hereinafter provided, and without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles, Bylaws or Association Rules, the Association shall have the duty to accomplish the following upon the Covered Property in such manner and at such times as the Board shall prescribe:

(a) provide any and all necessary maintenance, management, operation, repair and/or replacement of the Common Area and all Improvements constituting a part of the Common Area, including, without limitation, all streets within the Covered Property dedicated and accepted by the County, in accordance with sound property management policies and in accordance with any applicable governmental requirements, in a neat, orderly and safe condition and in such a manner as to enhance the appearance of the Common Area and all such Improvements, and to facilitate the orderly discharge of water through drainage systems and patterns established by Declarant. No structure, planting or other material shall be placed or other activities undertaken on any area within the Covered Property which, in the good faith determination of the Board, might create erosion or sliding problems, or interfere with established drainage systems or patterns. Any area drains and other drainage facilities and systems within the Common Area, including, without limitation, the Moat System, Common Retention Basins and subsurface drain tile system shall be maintained by the Association, in a neat, orderly and safe condition and in such a manner as to facilitate the orderly discharge of water by means of the same.

(b) provide any and all necessary maintenance or replacement of all landscaping as required anywhere within the Common Area and in accordance with any applicable governmental requirements, following the initial installation of such landscaping in accordance with this Declaration, including without limitation the trimming, watering and fertilization of all grass, ground cover, shrubs and trees, removal of dead or waste material and replacement of any dead or diseased grass, ground cover, shrubs or trees;

(c) provide any and all necessary maintenance, for all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;

(d) pay any real and personal property taxes and other charge assessed to or payable by the Association;

(e) install additional landscaping and/or additional Improvements, including, without limit, any and all drainage facilities, traffic control systems, signage, etc., as may be necessary or desirable in the discretion of the Board to maintain or enhance the appearance of the Covered Property or improve the safety of the Owners and Occupants, promote erosion control, and maintain or improve the quality of the business environment

within the Covered Property. Except as otherwise provided herein, the costs of any such maintenance and repair pursuant to this Section shall be paid out of the funds of the Association; and

(f) install, maintain and/or replace the perimeter fencing noted in **Section 5** of the Final Design Manual along Highway 111 and Airport Boulevard ("**Association Fencing**").

The Covered Property will be annexed into a landscape and lighting maintenance district ("**LLMD**") established by the County. It is anticipated that the LLMD will maintain, repair and replace (1) the Association Fencing and (2) all landscape, lighting and sidewalks (i) within the Common Area along Highway 111, Airport Boulevard and all public streets within the Covered Property and (ii) within the Public Park and Common Retention Basins.

7.2 Repair and Maintenance by Owner. Except for those portions of such Owner's Lot which consist of Common Area and/or are to be maintained by the Association, if any, as provided herein, the Owner of each Lot shall be responsible for the repair and maintenance of all portions of such Owner's Lot, including, without limitation, any and all Building(s), parking areas, sidewalks, private roads, driveways, parkways, landscaping, Improvements, slopes, walls, fencing, signage, lighting, trash enclosures, drainage facilities, including but not limited to the portion of the drain tile system within such Owner's Lot, and security gates and systems, in accordance with the standards identified in **Section 7.4** below. The maintenance of such Lot shall include, without limitation:

(a) keeping all unimproved portions of such Lot mowed and weeded and clear of all rubbish, trash and debris, and keeping such Lot in a neatly landscaped and sightly condition;

(b) maintaining the surface of any storage or parking area(s) located on such Lot in a clean and safe condition, including the paving and repairing or surfacing or resurfacing of such areas when necessary with the type of material originally installed therein, or such substitute therefor as shall in all respects be equal thereto in quality, appearance and durability, the removal of debris and waste materials and the washing or sweeping of paved areas as required, and the painting and repainting of striping, markers and directional signs as required;

(c) cleaning, maintaining and relamping of any external lighting fixtures and related fixtures located on such Lot;

(d) constructing, replacing, maintaining and/or repairing any drainage devices on such Owner's Lot other than the Moat System (which shall be maintained by the Association), including, without limitation, any and all drain tiles and on-site retention basins; and

(e) install, maintain and repair any and all fencing and or other facilities located within any Lot not otherwise maintained by the Association or the LLMD pursuant to **Section 7.1(f)** above. The reasonable costs to maintain, repair, replace and

restore any fencing between Lots ("**Shared Fencing**") shall be shared equally by the Owners of such Lots, except in the event of negligent or willful acts or omission of one party (the "**Responsible Party**"), as determined by the Board, including, without limitation, the failure to protect the Shared Fencing with paint and weatherproofing, in which case the Responsible Party shall bear any additional costs so determined to be attributable to the Responsible Party's negligent or willful act or omission. The right of any Owner to contribution from any other Owner under this Section is appurtenant to the land and passes to such Owner's successors in title; provided, however, the contribution right set forth herein shall be inapplicable to any Lots owned by Declarant unless and until Declarant constructs vertical Improvements on such Lot(s).

7.3 Right of Association to Maintain and Install. In the event that an Owner fails to accomplish any construction, replacement, maintenance, repair or installation required by this Article, the Association or its delegates may, but shall not be obligated to cause such maintenance, repair and installation to be accomplished as hereinafter set forth:

(a) Upon finding by the Board of a deficiency in such maintenance, repair or installation, the Board shall give notice of such deficiency to the Owner. The Owner shall have no more than thirty (30) days ("**Period**") following the receipt thereby of written notice (as required by **Section 15.10** below) of such election from the Board or such committee to select a day or days upon which such maintenance, repair or installation work shall be accomplished;

(b) The date which said Owner selects to cure the deficiency shall be no more than thirty (30) days from the end of the Period, or a reasonable time thereafter if such deficiency cannot be readily cured within such time;

(c) Unless the Owner and the Board otherwise agree, such maintenance or installation to cure the deficiency shall take place only during daylight hours on any day, Monday through Friday, excluding holidays; and

(d) If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment against the affected Owner and his Lot.

7.4 Standards for Maintenance and Installation.

(a) The exterior of all Improvements, including without limitation window glass, signs, walls, fences and roofs shall be maintained and repaired in a first-class manner. The painted exterior of any Building shall be repainted not less often than every ten (10) years.

(b) Slope and landscaped and improved areas within any Lot, including, without limitation, any drainage facilities located thereon, which are within a portion of a Lot and which are not part of the Common Area shall be maintained continuously by the Owner of such Lot, in a first-class manner and in an orderly and safe condition as to enhance their appearance, maintain established slope ratios, prevent erosion or sliding problems, and facilitate the orderly discharge of water through drainage systems and

facilities established by Declarant. No structure, planting or other material shall be placed or permitted to remain, or other activities undertaken on any area within the Covered Property which might create erosion or sliding problems, or interfere with established drainage systems or facilities.

(c) All Improvements shall at all times be maintained in compliance with all applicable laws, ordinances, orders, codes, rules, regulations and requirements of all federal, state, county, municipal and other governmental agencies and bodies having jurisdiction.

7.5 Right of Entry. The Association shall have the right following not less than twenty-four (24) hours notice to enter upon any Lot in connection with any maintenance, repair or construction in the exercise of the powers and duties of the Association, except for normal maintenance and repair of the Common Area for which no notice shall be required.

7.6 Maintenance of Public Utilities. Subject to **Section 7.1** above, nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Covered Property owned by such public utilities. However, the Association may (but is not required to) take such steps as are convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

ARTICLE VIII **INSURANCE**

8.1 Duty to Obtain Insurance; Types. The Board shall obtain and continue in effect adequate blanket public liability insurance (including medical payments) in an amount not less than Five Million Dollars (\$5,000,000), or in such other reasonable minimum amount as the Board may determine, covering all claims for personal injury and property damage arising out of a single occurrence on the Common Area and naming all Owners as additional insureds. The Board may also obtain and continue in effect blanket public liability insurance covering members of the Architectural Committee for any errors or omissions or any other liability in connection with the discharge of such members' duties as set forth in this Declaration. The Board shall also obtain and continue in effect fire insurance with extended coverage in an amount as near as possible to the full replacement value of any Improvements located within the Common Area, without deduction for depreciation. Such insurance shall be maintained by the Association as named insured for the benefit of the Association, Declarant, the Owners, and the Mortgagees as their interests may appear, subject, however, to loss payment requirements as set forth herein. The Board shall purchase such other insurance, including, but not limited to, errors and omissions, medical payments, malicious mischief, and vandalism insurance, fidelity bonds and worker's compensation, officers' and directors' liability and such other risks as shall customarily be covered with respect to planned developments similar in construction, location and use to the Covered Property.

8.2 Right and Duty of Owners to Insure. Each Owner shall obtain adequate casualty insurance and fire insurance in an amount as near as possible to the replacement cost, without deduction for depreciation or coinsurance, of all of the Improvements owned by such Owner.

Each Owner shall provide fire and extended coverage insurance on his personal property and fixtures within all Buildings and Improvements located on his Lot. Each Owner shall carry public liability insurance to cover his individual liability for damage to persons or property occurring upon his Lot or elsewhere upon the Covered Property, in any manner arising out of the use of such Owner's Lot. Such insurance shall be in an amount not less than Two Million Dollars (\$2,000,000), combined single limit, or in such other minimum amount as the Board may determine, covering all claims for personal injury and property damage arising out of a single occurrence with the amount of any deductible approved by the Board. Each Owner shall also carry business interruption insurance in an amount adequate to insure payment and performance of such Owner's obligations under this Declaration. All such policies as may be carried by the Owners shall contain waivers of subrogation of claims against Declarant, the Association, the Board, the officers of the Association and all the other Owners. Each Owner shall review annually the limits of his insurance coverage and increase such limits as appropriate. Notwithstanding the requirement for annual review, the insurance policies carried by each Owner shall, to the maximum extent possible, provide for automatic adjustments of coverage levels to reflect changes in costs resulting from inflation. Each Owner shall carry the Declarant and the Association as an additional named insured on all policies of public liability insurance carried by such Owner and shall furnish the Association with a current certificate of such insurance at all times. Such policies shall not adversely affect or diminish any liability under any insurance obtained by the Association, and duplicate copies of such other policies shall be deposited with the Board. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

8.3 Notice of Expiration. All of the policies of insurance required by the terms of this Declaration shall contain a provision that said policy or policies shall not be cancelled or terminated, nor expire by their terms, without thirty (30) days prior written notice to the Board. In the event an Owner fails to obtain or maintain such insurance coverage, the Association may obtain such insurance and levy a Special Assessment against such Owner and his Lot for the amount of the premium therefor. In the event the Board fails to obtain or maintain the insurance required to be obtained and maintained herein, any Owner, after first giving ten (10) days written notice to the Board, may, upon the expiration of such ten (10) day period (and provided that the Board has failed to obtain or maintain the coverage) obtain such coverage on behalf of the Association, and levy a Special Assessment against every other Owner and such other Owners' Lots for the premium paid therefor in an amount equal to the respective percentage Net Usable Area of the other Owners' Lots.

8.4 Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be a Common Expense to be included in the Regular Assessments levied by the Association.

8.5 Trustee for Policies. The Association, acting through the Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 8.1 shall be paid to the Board as Trustee. The Board shall

have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the Improvements for which the insurance was carried. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire. Any two directors of the Board may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

8.6 Actions as Trustee. Except as otherwise specifically provided in this Declaration, the Board, acting in behalf of the Association and all the Owners, shall have the exclusive right to bind such parties with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance carried by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees who have requested the same in writing.

8.7 Required Waiver. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers: (a) subrogation of claims against the tenants of the Owners; (b) any defense based on coinsurance; (c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (d) any invalidity or other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (e) any right of the insurer to repair, rebuild or replace, and, in the event any Improvements are not repaired, rebuilt or replaced following loss, any right to pay under the insurance, an amount less than the replacement value of the Improvements insured or the fair market value thereof; (f) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; and (g) any right to require any assignment of any Mortgage to the insurer. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Architectural Committee, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by the negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

ARTICLE IX

DESTRUCTION OF IMPROVEMENTS

9.1 Duty of Association. In the event of a partial or total destruction of any Improvements installed by Declarant or by the Association within or constituting part of the Common Area, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Article. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose.

9.2 Automatic Reconstruction. A Reconstruction Assessment may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Association shall cause the damaged or destroyed Improvements described in **Section 9.1** hereof to be restored as closely as practical to their condition prior to the destruction or damage.

9.3 Excess Insurance Proceeds. In the event any excess insurance proceeds remain, after any reconstruction by the Association pursuant to this Article, the Association shall retain such sums and utilize same to offset future Common Expenses.

9.4 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes as set forth in this Article.

9.5 Destruction of Owner's Improvements. In the event any Improvements, located on an Owner's Lot are destroyed by any casualty, the Owner of such Lot shall either promptly restore such Improvements at such Owner's sole cost, to their original condition in as fast and efficient a means as possible, or to the extent the Owner of such Lot elects not to restore such Improvements following such damage or destruction, such Owner shall promptly raze such damaged or destroyed Improvements and shall forthwith grade, pave, and/or landscape the area on which such Improvements were located in a safe and sightly condition.

ARTICLE X **EMINENT DOMAIN**

10.1 Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain or by conveyance under threat of condemnation or an action in inverse condemnation which the Declarant is authorized to bring pertaining to any portion of a Lot within the Covered Property which the Association has the obligation to maintain.

10.2 Representation by Association in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Covered Property which the Association owns or has the obligation to maintain, the Association on behalf of all the Members, shall be entitled to participate in any and all negotiations pertaining to such taking.

10.3 Award for Takings. Notwithstanding the foregoing, any awards received on account of the taking of any portion of the Common Area shall be used to restore the Common Area as promptly as practical to the extent of the condemnation proceeds. In the event any excess proceeds remain, the Association will retain such sums and utilize same to offset future Common Expenses.

10.4 Condemnation of Owner's Improvements. In the event of a taking of any Improvements located on an Owner's Lot, such Owner shall, either promptly restore such Improvements at such Owner's sole cost, to their original condition to the extent possible in as fast and efficient a means as possible, or to the extent the Owner of such Lot may not or elects not to restore such Improvements following such taking, such Owner shall promptly raze such Improvements and shall forthwith grade, pave and/or landscape the area on which such Improvements were located in a safe and sightly condition.

10.5 Reallocation Following Condemnation. Following the condemnation of any Owner's Lot, or portion thereof, the Board shall promptly reallocate the percentages of Net Usable Area of all Lots and shall notify each Owner in writing of the results of such reallocation. Any and all assessments payable thereafter shall be prorated on the basis of such reallocation and shall be paid on the basis thereof.

ARTICLE XI **USE RESTRICTIONS**

11.1 Permitted Uses. All Lots in the Covered Property shall be used for no purpose other than as permitted by the County's zoning ordinances, the specific plan for Desert Cities Industrial Park, and any standards adopted by the Architectural Committee pertaining to the uses of Lots. No portion of the Covered Property shall ever be used for any non-business purpose or any other purpose which would be inconsistent with or detrimental to a first class business park. All business operations shall be performed and carried out predominantly within a Building in such a manner that the operations and uses do not cause or produce a nuisance to other portions of the Covered Property, such as, but not limited to, vibration, sound, electromechanical disturbance and radiation, electromagnetic disturbance, radiation, air or water pollution, dust or emission of odors, toxic or nontoxic matter.

11.2 Prohibited Uses. Without limiting any other restrictions herein, in no event shall any Improvements be constructed, placed or used on the Covered Property, nor shall the Covered Property in any event be used for, any of the following purposes: (a) any residential use, including, without limitation, hotels and motels, proprietor or caretaker quarters, temporary trailers, mobilehomes or recreational vehicles, except for temporary quarters for security personnel during construction; (b) the manufacturing of tires and tubes and the fabrication of rubber, plastics and synthetic products; (c) metal foundries, blast furnaces and the smelting of metals; (d) auto-wrecking, junkyards and/or salvage yards; (e) a hazardous waste facility that would require a hazardous waste facility siting permit pursuant to applicable County or city regulations; (f) the refining of petroleum or any of its products and/or the bulk storage of petroleum and/or other fuels, including, without limitation, above-ground storage, (g) the use of acids and other abrasive manufacturing processes; (h) concrete batch plants and asphalt plants; (i) sandblasting, unless such use is limited to within Buildings and such use does not become a nuisance as defined below; (j) drive-in theatres; (k) explosives manufacturing and testing, including fireworks; (l) swap meets; (m) sewage treatment plants; (n) the slaughtering or rendering of any animal, including, without limitation, meat packing; (o) commercial excavation of buildings or construction materials, except in the usual course of construction of Improvements on Lots; (p) distillation of bones; (q) dumping, disposal, incineration, or reduction of garbage, sewage, dead animals or refuse; (r) cemeteries; (s) jails or honor farms; (t) labor or migrant work camps; (u) sexually oriented businesses, as defined by applicable County and/or city ordinances; (v) massage parlors or escort services; (w) betting or gambling establishments; (x) except for recycling and waste disposal as an accessory use (i.e., a minor component of the use of a Lot), facilities for the storage, sorting and/or distribution of recycled and waste materials, including without limitation, household, industrial and commercial waste and wood, metal and construction wastes; (y) the manufacturing of chemicals and related products; (z) skeet shooting, target shooting or any other discharge of firearms; and (aa) hunting.

11.3 Animals. No livestock, poultry or animals of any kind shall be raised, bred or kept upon any portion of the Covered Property.

11.4 Mineral Exploration. No oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Covered Property, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any portion of the Covered Property or within five hundred (500) feet below the surface of the Covered Property, except above-ground tanks used for any necessary or appropriate maintenance or fueling of vehicles. No derrick or other structure designed for use in boring for water, oil, natural gas, or other minerals shall be erected, maintained or permitted on any portion of the Covered Property.

11.5 Other Operations and Uses. Operations and uses that are neither specifically prohibited nor specifically authorized herein may be permitted in a specific case if written operational plans and specifications for such operations or uses are submitted to and approved in writing by the Board in its sole and absolute discretion.

11.6 Nuisances. No noxious or offensive trade or activity shall be carried on within any Lot or any part of the Covered Property, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot, or which shall in any way increase the rate of insurance for any other Lot or any portion of the Common Area. In this regard, all noises, sounds and vibrations shall be appropriately muffled in such a manner so as not to be objectionable as to intermittent beat, frequency, shrillness or volume. Every use shall be operated in such a manner that the vibration, heat and glare inherently and recurrently generated from such use is not perceptible beyond the Building in which the use is located. Subject to Final Design Manual requirements, including but not limited to Riverside County Ordinance 655, electrical reflectors, spotlights, flood lights and other methods of illumination may be used to illuminate buildings, landscaping areas, signs and parking areas, provided that such devices are equipped with proper lenses or hoods to concentrate the illumination upon such structures and areas preventing any bright or direct illumination upon adjacent Lots, any street, whether public or private, or into the sky (i.e., air traffic hazard). A "nuisance" shall include, without limitation, any of the following conditions:

(a) emission of dust, sweepings, dirt, or cinders into the atmosphere, or discharges of liquid, solid wastes, or other harmful matter into any stream, river, or other body of water if such emission or discharge may adversely affect the use or intended use of any property or may adversely affect the health, safety, or comfort of persons in the vicinity, or discharge of waste or any substance or material of any kind into any sewer serving the Covered Property, or any part thereof, in violation of any law, rule, or regulation of any public body having jurisdiction thereof;

(b) escape or discharge of fumes, odors, gases, vapors, acids, or other substances into the atmosphere if such escape or discharge may be detrimental to the health, safety, or welfare of persons, may interfere with the comfort of persons within the vicinity, or may be harmful to property or vegetation;

(c) the perception, at any point outside the boundaries of any Building of any noise or vibration from any activity, machine, device, or combination thereof located within such Building that unreasonably interferes with the use or enjoyment of any other Lot.

11.7 Signs. No sign or billboard of any kind shall be installed or maintained unless consistent with the requirements of the Design Guidelines, except such signs as may be used by Declarant or its sales agents in connection with the development of the Covered Property and sale of the Lots. A Member may display on his Lot a sign advertising its sale or lease by him, provided that such sign is of a size, design, color, style, illumination and location specifically authorized by the Design Guidelines.

11.8 Temporary Structures. No structure of a temporary character, tent, shack, barn or other out-building shall be used on any portion of the Covered Property at any time either temporarily or permanently unless it is consistent with the Final Design Manual and approved by the Board; provided, however, the use of such structure for any residential purpose, except for temporary quarters for security personnel during construction, is expressly prohibited within the Covered Property .

11.9 Vehicles

(a) The on-street parking of any vehicle or equipment is expressly prohibited within the Covered Property except for temporary parking for the loading or unloading of vehicles and equipment. Except for temporary (i.e., during business hours) customer parking, all vehicles and equipment shall be parked and/or stored within a Building or a screened enclosed yard area or storage area.

(b) An Owner, Occupant or Permittee of a Building or Lot shall use only the parking area(s) located on the Lot on which its respective Building(s) is located and shall not use the parking area(s) on any other Lot within the Covered Property without the written consent of the Owner of such Lot. Notwithstanding the foregoing, in order to meet the parking requirement of the County for each Lot, Declarant may require the Owners of certain Lots to enter into reciprocal parking and/or access agreements at the time such Owner(s) acquires title to such Lot(s).

(c) No automobile, recreational vehicle or equipment or commercial vehicle or any other motorized vehicle may be dismantled, rebuilt, repaired, serviced or repainted on the Covered Property unless performed within a Building or an enclosed yard or storage area, obscured from view of adjoining Lots, streets, or alleys by a fence, screen and/or storage facility, except incidental service and repairs necessary or appropriate to the business of Owner.

(d) As used in this Section, "vehicle or equipment" shall include without limitation, automobiles, trucks, trailers, boats, campers, trailer coaches, buses, house cars, camp cars, motor homes, or any other similar type of equipment or vehicle.

(e) The Board may adopt other reasonable rules for the regulation of the admission and parking of vehicles consistent with a non-retail business park, including,

without limitation, commercial vehicles and employee and Owner parking within the Covered Property, including the assessment of charges to Owners who violate or whose invitees violate, such rules. Any charges so assessed shall be Special Assessments. Such rules adopted by the Board shall take into consideration the need for certain businesses operated upon the Covered Property to have parking available for customers.

11.10 Unightly Items. All weeds, rubbish, debris, or unsightly material or objects of any kind shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. All refuse containers, trash cans, pallets, containers, drums, woodpiles, machinery and equipment shall be prohibited except in accordance with the Final Design Manual and rules adopted by the Board.

11.11 Antennae and Other Roof Structure. Subject to the provisions of California Civil Code Section 1376, no television, radio, or other electronic towers, aerials antennae or device of any type for the reception or transmission of radio or television broadcasts or other means of communication (unless the same be contained within a Building) or underground conduit or appliances or installations on exterior roofs or structures including, without limitation, roof-top turbine ventilators, attic ventilators or solar panels shall hereafter be erected, constructed, placed or permitted to remain on the Covered Property unless and until the same shall have been approved in writing by the Architectural Committee.

11.12 Window Covers. No window shall be covered with aluminum foil, newspapers, signage of any kind or other material not designed for use as a window cover in a first class business park.

11.13 Drainage. There shall be no interference with the established drainage pattern and system over any portion of the Covered Property unless adequate provision is made for proper alternative drainage and such proposed interference with the pattern and system and adequate alternative provisions are approved by the Declarant and the County or other governmental or quasi-governmental agency with approval authority over such systems. For the purposes hereof an "established drainage pattern and system" is defined as the drainage which exists at the time the overall grading of the Covered Property is completed or that which is shown on any plans approved by the County or other applicable governmental or quasi-governmental agency, and includes, but is not necessarily limited to, drainage inlets and outlets, underground drain pipes, drain tiles, open drainage channels, the Moat System, the Common Retention Basins and patterns of drainage over the Covered Property from and to adjoining properties and improvements. Except as otherwise prohibited, the Association shall have the right to use the established drainage pattern and system for the purpose of draining the Covered Property and Improvements thereon; provided that such right of drainage shall not include the right to discharge noxious or offensive matter. Notwithstanding the foregoing, each Owner shall be responsible to retain on the Owner's Lot all post-development stormwater discharge generated by the Owner's Lot. The post-development stormwater discharge from a Lot into or onto another Lot or into or onto the Common Area, including, without limitation, streets, the Moat System and Common Retention Basins is expressly prohibited.

11.14 Sewage and Water System. No individual water supply system, water softener or other water treatment system or sewage disposal system shall be permitted within the Covered

Property unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of the applicable water or sewer district and any applicable governmental health authority having jurisdiction.

11.15 Hazardous Material

(a) To the extent that such use, analysis, generation, emission, manufacture, storage, disposal or transportation is not otherwise prohibited herein, each Owner shall at all times and in all respects comply with all Laws relating to industrial hygiene, environmental protection and the use, analysis, generation, emission, manufacture, storage, disposal or transportation of any Hazardous Material.

(b) Owner shall indemnify, defend (by counsel reasonably acceptable to Declarant and the Association), protect, and hold Declarant and the Association, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including attorneys' fees) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) Owner's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from such Owner's Lot, or (ii) Owner's failure to comply with any Laws. Owner's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any investigation (including consultant's and attorneys' fees and testing) required or necessary for the repair, remediation, restoration, cleanup or detoxification or decontamination of the Owner's Lot or any portion of the Common Area and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. For purposes of the release and indemnity provisions hereof, any acts or omissions of Owner, or by employees, agents, assignees, contractors or subcontractors of Owner or others acting for or on behalf of Owner (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Owner.

(c) Without limiting the foregoing, if the presence of any Hazardous Material on an Owner's Lot is caused or permitted by Owner and results in any contamination of such Lot, Owner shall promptly take all actions at its sole expense as are necessary to return such Lot to the condition existing prior to the introduction of any such Hazardous Material; provided, however, Owner shall not take any remedial action in response to the presence of any Hazardous Materials in or about such Lot nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with such Lot, without first notifying Declarant and the Association of Owner's intention to do so and affording Declarant and the Association ample opportunity to appear, intervene or otherwise appropriately assert and protect Declarant's and the Association's interest with respect thereto.

(d) Owner shall immediately notify Declarant and the Association in writing of: (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Laws; (ii) any claim made or threatened by any person against Owner, and/or such Owner's Lot relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to

result from any Hazardous Materials; and (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in, emanating from, or removed from such Owner's Lot, including any complaints, notices, warnings or asserted violations in connection therewith. Owner shall also provide to Declarant and the Association as promptly as possible, and in any event within five (5) business days after Owner first receives or sends the same, with copies of all claims, reports, complaints, notices, citations, report warnings or asserted violations relating in any way to such Lot, or Owner's use thereof, or involving failure by Owner or such Lot to comply with any Law. Owner shall promptly deliver to Declarant and the Association copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from such Owner's Lot.

(e) Owner shall, within thirty (30) days after receipt of Declarant's and the Association's written request, provide Declarant and the Association with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Owner's compliance with any Law specified by Declarant and the Association.

(f) Owner shall at its own expense procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Owner's use of such Owner's Lot, including, without limitation, the disposal of vapors from such Owner's Lot and discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving such Lot. Except as discharged into the sanitary sewer in strict accordance and conformity with all applicable Laws, Owner shall cause any and all Hazardous Materials removed from such Owner's Lot to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Owner shall in all respects handle, treat, deal with and manage any and all Hazardous Materials in, on, under, or about such Owner's Lot in total conformity with all applicable Laws and prudent industry practices regarding management of such Hazardous Materials.

(g) Notwithstanding any of the foregoing, Declarant's and the Association's prior written approval of all such actions and the contractors to be used by Owner in complying with the provisions of this Declaration shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Covered Property.

(h) Declarant and the Association shall have the right to enter any Owner's Lot at any time, in the case of an emergency, and otherwise at reasonable times with reasonable prior notice, for the purpose of inspecting the condition of any such Owner's Lot and for verifying compliance by Owner with this Declaration and all Laws, and to employ experts and/or consultants in connection therewith and/or to advise Declarant and the Association with respect to Owner's activities, including but not limited to the installation, operation, use, monitoring, maintenance, or removal of any Hazardous Material or storage tank on or from such Owner's Lot. In any such case, Owner shall upon request reimburse Declarant and the Association, as the case may be, for the costs and expenses of such inspection, but only if a violation is determined to exist.

11.16 Staging. Staging shall be prohibited on the Covered Property unless performed within a Building or an enclosed yard or storage area, obscured from the view of adjoining Lots, streets, or alleys by a fence, screen and/or storage facility. Any fence, screen and/or storage facility required by this Section shall comply with the requirements of, the Design Guidelines.

11.17 Outside Storage. Outside storage shall be prohibited on the Property unless such storage is obscured from the view of adjoining Lots, streets, or alleys by a fence, screen and/or storage facility. Any fence, screen and/or storage facility required by this Section shall comply with the Design Guidelines. Notwithstanding the foregoing, no outside storage shall exceed the height of the fence or screen obscuring the view of such storage without the express, written consent of the Architectural Committee.

11.18 Use of the Common Area. There shall be no obstruction of the Common Area nor shall anything be stored in the Common Area without the prior written consent of the Board except as hereinafter expressly provided. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board.

11.19 Airport Land Use Commission Restrictions. The following uses are prohibited:

(a) Any use which would direct a steady light or flashing light of red, white, green or amber colors associated with airport operations toward an aircraft engaged in an initial straight climb following takeoff or toward an aircraft engaged in a straight final approach toward a landing at the airport, other than an FAA-approved navigational signal light or visual approach slope indicator.

(b) Any use which would cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards an aircraft engaged in a straight final approach towards a landing at an airport.

(c) Any use which would generate large quantities of smoke or water vapor or which would attract large concentrations of birds, or which may otherwise affect safe air navigation within the area.

ARTICLE XII **EASEMENTS**

12.1 Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant, or any Owner, without prior written approval by Declarant or such Owner, and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant or the affected Owner or Mortgagee.

12.2 Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein, or granted to any Owner, shall be nonexclusive.

12.3 Certain Rights and Easements Reserved to Declarant. The following rights and easements are hereby reserved to Declarant.

(a) Utilities. Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service any portion of the Covered Property and/or to further develop any undeveloped portions of the Covered Property are hereby reserved by Declarant, together with the right to grant and transfer the same; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Owners of their Lots.

(b) Construction and Sales. There is hereby reserved to Declarant together with the right to grant and transfer the same to Declarant's contractors, subcontractors, sales agents and representatives and prospective purchasers of Lots, over the Covered Property as the same may from time to time exist, easements for construction, maintenance, temporary storage of materials and equipment during the course of construction or maintenance, display, sales and exhibit purposes in connection with the improvement and sale or lease of Lots within the Covered Property.

(c) Ingress and Egress. Easements over the Covered Property sufficient to guarantee access and entry to the Covered Property and any Improvements thereon for any authorized Fire Inspector, Building Official, or any other official charged with carrying out the laws of the County, the State of California, or the United States of America.

(d) Slopes and Grading. There is hereby reserved to Declarant easements over all portions of the Covered Property to revise, maintain, repair, replace, and/or improve the drainage patterns and systems within the Common Area.

(e) Additional Easements. There is hereby reserved to Declarant the right to acquire such additional easements over the Covered Property as it shall deem necessary and appropriate in its sole discretion.

12.4 Certain Easements for Owners

(a) Rights and Duties: Utilities. Wherever sanitary sewer service connections, water service connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property the Owners of any Lots served by said connections, lines or facilities shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Lot, and to enter upon any Lot owned by any other Owner, or to have utility companies enter upon the Lots, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Drainage. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, easements for drainage over the Covered Property

from the drainage patterns and systems described in **Section 11.13** hereof. Notwithstanding the foregoing, prior to the construction of vertical Improvements on an Owner's Lot each Owner shall be responsible to retain all stormwater discharge generated on the Owner's Lot on such Lot. Any post-development stormwater discharge from a Lot into or onto another Lot or into or onto the Common Area, including, without limitation, streets, the Moat System and Common Retention Basins is expressly prohibited.

(c) Common Area. There is hereby reserved to Declarant, together with the right to grant and transfer same to Owners, for the benefit of such Owners and their respective Permittees, nonexclusive easements of vehicular and pedestrian access, ingress and egress over established traffic lanes, driveways and other portions of the Common Area designed for access to and from the Covered Property and adjacent public streets.

12.5 Certain Easements for Association. There is hereby reserved to Declarant easements over the Covered Property, together with the right and obligation to grant and transfer the same to the Association, for the purpose of permitting the Association to discharge its obligations as described in this Declaration.

12.6 Support, Settlement and Encroachment. There is hereby reserved to Declarant, together with the right to grant and transfer the same to each of the Owners, an easement for the benefit of, and appurtenant to each Owner's Lot and burdening each contiguous Lot, for the purpose of:

- (a) support and accommodation of the natural settlement of structures;
- (b) encroachment by reason of a roof, eave overhang or similar projections created during the original construction of the Covered Property, if any, or the reconstruction or repair of a Building or Improvements on the Covered Property in accordance with plans and specifications approved by the Architectural Committee and County; and
- (c) encroachments due to original engineering or surveying errors, errors in original construction, errors in reconstruction or repair in accordance with plans and specifications approved by the Architectural Committee and County.

ARTICLE XIII **RIGHTS OF LENDERS**

13.1 Filing Notice; Notices and Approvals. No Mortgagee shall be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Covered Property. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights

pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

13.2 Priority of Mortgage Lien. No breach of the covenants, conditions, restrictions or easements herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot except as otherwise provided in this Article.

13.3 Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall have the right, but not the obligation, to cure any breach of the provisions of this Declaration which occurred prior to the date such Mortgagee acquired the title to a Lot.

13.4 Resale. It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

13.5 Relationship with Assessment Liens.

(a) The lien provided for in Article IV hereof, entitled "Nonpayment of Assessments" for the payment of Assessments shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that the mortgagee or any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Nothing in this Section shall be construed to release any Owner from his obligations to pay for any assessment levied pursuant to this Declaration.

13.6 Other Rights of Mortgagees. Any Mortgagee or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Mortgagees who have delivered a written request therefor to the Association specifying the Lot or Lots to which such request relates.

13.7 Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

13.8 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

ARTICLE XIV **PROTECTION OF THE PROJECT FROM LIENS**

14.1 Association to Defend Certain Actions. In the event that a lawsuit is brought against all or substantially all of the Members which will or could result in any lien or encumbrance being levied against the Covered Property or a substantial portion thereof, the Association may defend such lawsuit and the costs of such defense shall be a Special Assessment against all of the Members joined as defendants in such lawsuit; provided, however, in the event that an insurance carrier is obligated to provide such defense under a policy of insurance carried by the Association, the Association shall be relieved of the obligation to provide such defense. Nothing contained herein shall in any way limit the rights of any Member or Members to retain counsel of their choice to represent themselves in such lawsuit at their own expense. In the event that a Member so chooses, he shall not be relieved of liability for the Special Assessment provided for in this Section.

14.2 Payment of Lien. In the event that a lien or encumbrance attaches to all or substantially all of the Covered Property by reason of judgment or otherwise, the Association may promptly take the appropriate steps to remove such lien, including but not limited to the payment of money and the posting of a bond. The Association shall have the power to borrow money and to take such other steps as are necessary to free the Covered Property of such liens.

14.3 Owners to be Specially Assessed. Simultaneously with any action taken pursuant to **Section 14.2** entitled "Payment of Lien," the Association shall levy a Special Assessment against all of the Members whose Lots were subject to the lien or encumbrance which caused the Association to act pursuant to said Section equal to each such Member's pro rata share of such lien or encumbrance. In the event that such Special Assessment is not paid within thirty (30) days of its due date, the Board may effect the remedies of the California Civil Code and Article IV hereof entitled "Nonpayment of Assessment."

14.4 Reimbursement by Certain Owners. In the event that it shall be proven in a court of law of competent jurisdiction over the claim or claims causing the Association to take action under this Article that a judgment resulting in a lien on all or a portion of the Covered Property

was primarily due to the acts or omission of a particular Member or his agents, employees or invitees, such Member or Members shall reimburse the Association for all expenses incurred by it pursuant to the provisions of this Article. Upon such reimbursement, the Association shall distribute the funds received to the Members against whom Special Assessments were levied pursuant to the provisions of this Article.

ARTICLE XV **GENERAL PROVISIONS**

15.1 **Enforcement.** The Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control, Assessment liens, or any other liens or charges and Association Rules, the Association shall have the exclusive right to the enforcement thereof. Notwithstanding anything set forth in this Declaration to the contrary, prior to the filing of any action by the Association against an Owner, or by an Owner against the Association, the Association or Owner, as the case may be, shall comply, where applicable, with the requirements of California Civil Code Section 1354, requiring in certain circumstances that the parties endeavor to submit disputes to a form of alternative dispute resolution such as mediation or arbitration prior to filing a civil action.

15.2 **No Waiver.** Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws or Association Rules in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

15.3 **Cumulative Remedies.** All rights, options and remedies of Declarant, the Association, the Owners or Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

15.4 **Severability.** Invalidation of any one or a portion of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

15.5 **Covenants to Run with the Land; Term.** The covenants, conditions, restrictions and easements of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions, restrictions and easements shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners, has been recorded at least one (1) year prior to the end

of any such period, agreeing to terminate said covenants, conditions, restrictions and easements in whole or in part.

15.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of an industrial and business office community or tract and for the maintenance of the Covered Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

15.7 Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

15.8 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

15.9 Attorney's Fees. In the event action is instituted to enforce any of the provisions in this Declaration the party prevailing in such action shall be entitled to receive from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit.

15.10 Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner or Mortgagee shall be delivered personally or sent by registered or certified mail, return receipt requested, to the most recent address furnished by such parties in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot or to any office of the Mortgagee in Riverside County, or if no such office is located in said county, to any office of such Mortgagee. Any notice so deposited in the mail within the County shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered on all such co-Owners.

(b) The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees, or to all Members or all Mortgagees, to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailings whether or not such notices are actually received.

15.11 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

15.12 Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

15.13 Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association nor any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence, the like made in good faith or which such Board, committee or persons reasonably believed to be within the scope of their duties.

15.14 Leases. Any agreement for the leasing or rental of a Lot or any Building thereof (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease (and any sublease or assignment thereunder) shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, and the Association Rules. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing shall be a default under the lease. All leases (and any sublease or assignment thereof) shall be in writing. Any Owner who shall lease his Lot or Building thereon shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, the Bylaws and the Association Rules.

15.15 Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant to alter the Lots, or to construct such additional Improvements as Declarant deems advisable prior to completion of Improvements upon and sale of the entire Covered Property. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Covered Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Covered Property. Declarant reserves the right to alter its construction plans and designs as it deems appropriate. The rights of Declarant hereunder may be assigned to any successor or successors to all or part of said entity's respective interest in the Covered Property, by an express assignment incorporated in a recorded assignment, deed or lease, as the case may be, transferring such interest to such successor. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Members' rights to use and enjoy the Covered Property.

15.16 Amendments. Subject to the other provisions of this Declaration, including without limitation, the rights of Mortgagees pursuant to Articles VIII and XIII hereof, entitled "Insurance" and "Rights of Lenders", or otherwise, this Declaration may be amended as follows:

- (a) Until the expiration of Declarant's Class B Board appointment right, any amendments or modifications shall be effective when executed by Declarant.

(b) An amendment or modification approved by an affirmative vote and written assent of Members owning seventy percent (70%) or more of the Net Usable Area.

(c) An amendment or modification that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and when recorded in the Official Records of Riverside County.

15.17 Nondiscrimination. Each Owner and Occupant covenants by and for itself, its heirs, executors, administrators and assigns, respectively, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Covered Property, and each Owner and Occupant (itself or any person claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof or any portion thereof.

15.18 Nondiscrimination Clauses. Each Owner and Occupant shall refrain from restricting the rental, sale or lease of the Covered Property or any portion thereof, on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry, in the leasing, subleasing, transferring, use or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

15.19 Declarant's Rights and Reservations. Nothing in this Declaration shall limit, and no Owner nor the Association shall do anything to interfere with, the right of the Declarant to subdivide or resubdivide any portion of the Covered Property, or to complete Improvements to and on the Common Area or any portion of the Covered Property owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Covered Property. The rights of Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures and displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conduct of its business of completing the work and disposing of the Lots by sale, resale, lease or otherwise. Each Owner by accepting a deed to a Lot, hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners or any Owner, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time to establish additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Covered Property. Declarant may use any Lot owned by Declarant as a real estate sales or leasing office. Declarant need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by Declarant on any portion of the Covered Property by Declarant or its agents or Permittees. The rights of Declarant hereunder and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest to any portion of Declarant's interest in any portion of the Covered Property by express written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant shall be required before any amendment to this **Section 15.19** shall be effective. Each Owner hereby grants, upon acceptance of his deed to his Lot, an irrevocable, special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this **Section 15.19**. Declarant and its prospective purchasers shall be entitled to the non-exclusive use of the Common Area, without further cost for access, ingress, egress, use or enjoyment in order to show the Covered Property to its prospective purchasers, lessees, and transferees and to dispose of the Covered Property as provided herein, and to develop and sell the Covered Property.

15.20 County Mandated Provisions. Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply:

(a) The Association established herein shall manage and continuously maintain the Common Area, as more particularly described in **Exhibit 'C'** attached hereto, and shall not sell or transfer the Common Area or any part thereof, absent the

prior written consent of the Planning Department of the County of Riverside or the County's successor-in-interest.

(b) The Association shall have the right to assess the Owners of each individual Lots for the reasonable cost of maintaining such Common Area, and shall have the right to lien the property of any Owner who defaults in the payment of an Assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

(c) This Declaration shall not be terminated, 'substantially' amended, or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage or maintenance of the Common Area or any reciprocal easement established pursuant to the Declaration.

(d) In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the Association Rules, if any, this Declaration shall control.

ARTICLE XVI **ANNEXATION**

All or portions of the Annexable Property may be annexed to this Declaration from time to time by a Declaration of Annexation in the form attached hereto as Exhibit "F", executed and acknowledged by the Declarant and recorded in the Official Records of the County of Riverside, California, in which event the real property so annexed will constitute a part of the Covered Property and be subject to the provisions of this Declaration.

RECEIVED
MAY 11 2009
BY:

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

"Declarant"

HONZEL DEVELOPMENT, LLC,
an Oregon limited liability company

By: Honzel Limited Partnership,
an Oregon limited partnership
Its: Sole Member

By: Drew Honzel
General Partner

ACKNOWLEDGMENT

State of ~~California~~ Oregon)
County of Clatsop)

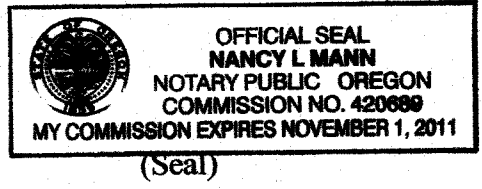
On May 8, 2009, before me, Nancy L. Mann,
(insert name and title of the officer)

personally appeared Drew Honzel,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Nancy L Mann



LENDER'S CONSENT [IF APPLICABLE]

The undersigned, _____, beneficiary under that certain Deed of Trust recorded as Instrument No. _____ on _____, 20__, Official Records of Riverside County, California, hereby consents to the within Declaration of Covenants, Conditions, Restrictions and Easements for Desert Cities Industrial Park, and hereby subordinates the lien of said Deed of Trust to the provisions contained herein.

By: _____
Its: _____

By: _____
Its: _____

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE COVERED PROPERTY [PHASE 1]

THE CERTAIN REAL PROPERTY LOCATED IN THE UNINCORPORATED AREA OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 3: 763-310-014-7

LOT 16 OF COACHELLA LAND AND WATER COMPANY'S SUBDIVISION OF SECTION 16, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 4, PAGE 53 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM THE PORTION THEREOF INCLUDED IN THE PARCEL OF LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 16; THENCE NORTH 89° 49' 33" WEST ALONG THE SOUTHLINE OF SAID SECTION 16, 252.36 FEET; THENCE NORTH 0° 02' 08" EAST 993.30 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 623.69 FEET THROUGH AN ANGLE OF 13° 05' 36", A DISTANCE OF 142.53 FEET; THENCE NORTH 13° 07' 44" EAST 927.30 FEET TO THE EAST LINE OF SAID SECTION 16, DISTANT THEREON NORTH 0° 41' 50" WEST FROM SAID SOUTHEAST CORNER, 2038.57 FEET; THENCE SOUTH 0° 41' 50" EAST ALONG SAID EAST LINE, 2038.57 FEET, TO THE POINT OF BEGINNING;

ALSO EXCEPTING THEREFROM THE SOUTHERLY 40 FEET CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED SEPTEMBER 16, 1955 AS INSTRUMENT NO. 60213 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 4: 763-310-013-6; 763-310-023-5

THE EAST HALF OF LOT 15 OF THE COACHELLA LAND AND WATER COMPANY'S SUBDIVISION OF SECTION 16, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 4, PAGE 53 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM THE EASTERLY 25 FEET OF THE HEREIN DESCRIBED PROPERTY AS GRANTED TO COACHELLA VALLEY COUNTY WATER DISTRICT BY DECREE RECORDED JULY 29, 1957 AS INSTRUMENT NO. 54854 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; ALSO EXCEPTING THEREFROM THE SOUTHERLY 40 FEET GRANTED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED SEPTEMBER 12, 1955 IN BOOK 1792, PAGE 188 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXHIBIT "B"

LEGAL DESCRIPTION OF THE ANNEXABLE PROPERTY

THE CERTAIN REAL PROPERTY LOCATED IN THE UNINCORPORATED AREA OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 5: 763-310-010-3 (PHASE 2)

LOT 9 OF COACHELLA LAND AND WATER COMPANY'S SUBDIVISION OF SECTION 16, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 4, PAGE 53 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM THE PORTION IN THE NORTHEAST CORNER THEREOF, AS GRANTED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED DECEMBER 19, 1927 IN BOOK 722, PAGE 62 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THE EASTERLY 20 FEET OF SAID PROPERTY INCLUDED IN PUBLIC HIGHWAY;

ALSO EXCEPTING THAT PORTION, IF ANY, LYING NORTH AND EAST OF THE SOUTHWESTERLY LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY;

ALSO EXCEPTING THEREFROM THE PORTION THEREOF CONTAINED WITHIN THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 16, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN; THENCE NORTH 89° 49' 33" WEST, ALONG THE SOUTH LINE OF SAID SECTION 16, 252.36 FEET; THENCE NORTH 0° 02' 08" EAST, 993.30 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 623.69 FEET THROUGH AN ANGLE OF 13° 05' 36" A DISTANCE OF 142.53 FEET; THENCE NORTH 13° 07' 44" EAST, 927.30 FEET TO THE EAST LINE OF SAID SECTION 16, DISTANT THEREON NORTH 0° 41' 50" WEST FROM SAID SOUTHEAST CORNER, 2038.57 FEET; THENCE SOUTH 0° 41' 50" WEST, ALONG SAID LINE, 2038.57 FEET TO THE POINT OF BEGINNING, AS CONVEYED BY EDDIE L. HAMEL AND FLORA D. HAMEL, HUSBAND AND WIFE, TO THE UNITED STATES OF AMERICA BY DEED RECORDED DECEMBER 22, 1943 IN BOOK 610, PAGE 241 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

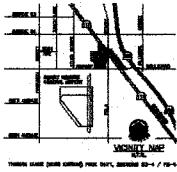
ALSO EXCEPTING THEREFROM A ONE-HALF INTEREST IN AND TO ALL GAS, OIL, MINERAL AND OTHER HYDROCARBON SUBSTANCES, WITHOUT RIGHT OF SURFACE ENTRY, AS RESERVED BY BETTY M. HAMEL IN DEED RECORDED JANUARY 5, 1973, AS INSTRUMENT NO. 1735 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 1: 763-310-009-3 (PHASE 3)

LOT 10 OF COACHELLA LAND AND WATER COMPANY'S SUBDIVISION OF SECTION 16, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 4, PAGE 53 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

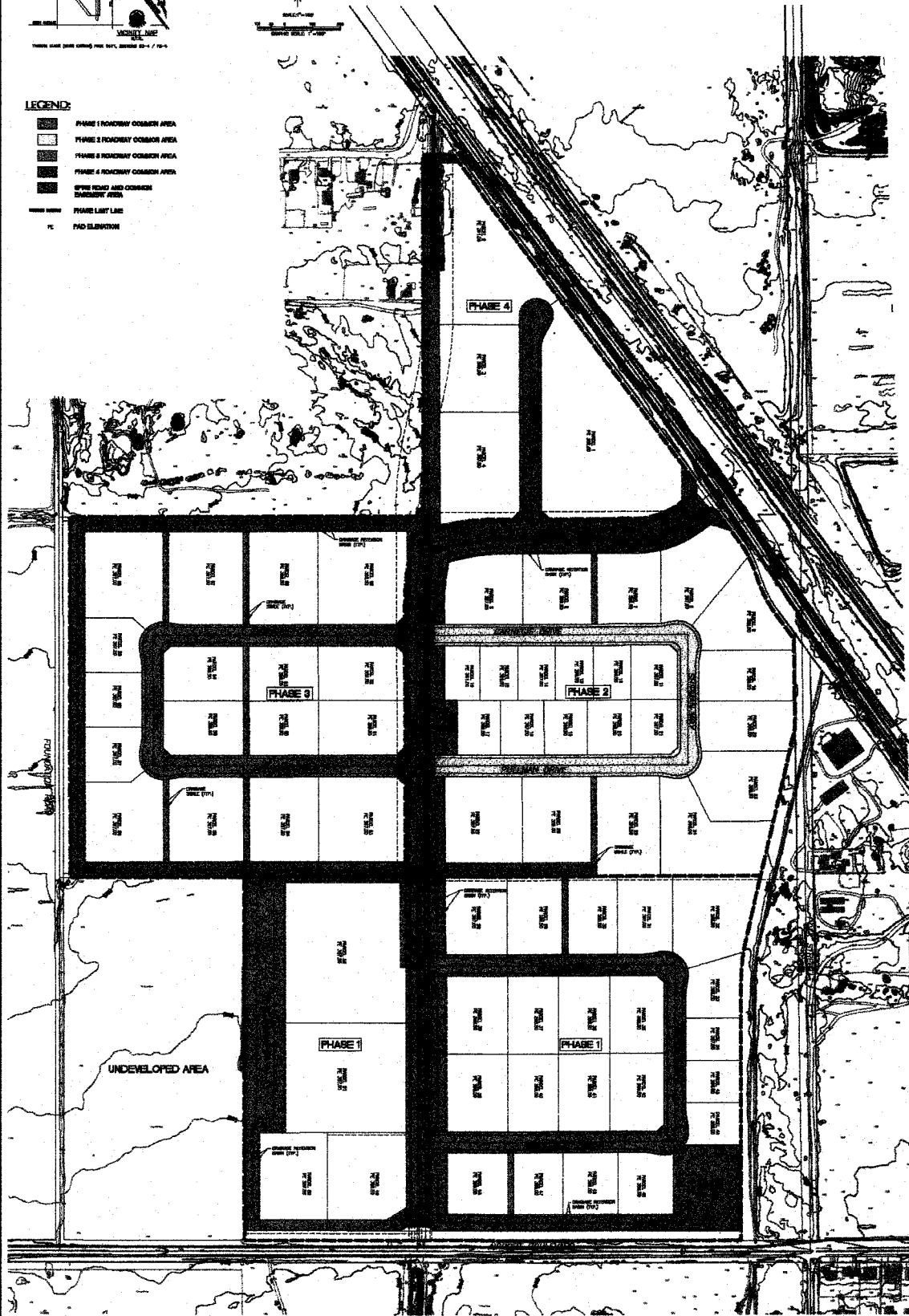
PARCEL 2: 763-290-002-5 (PHASE 4)

THAT PORTION OF LOT 8 OF COACHELLA LAND AND WATER COMPANY'S SUBDIVISION OF SECTION 16, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN AS SHOWN BY MAP ON FILE IN BOOK 4, PAGE 53 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF THE 100 FOOT STRIP OF LAND CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED DECEMBER 19, 1927 IN BOOK 722, PAGE 68 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.



LEGEND:

- PHASE 1 ROADWAY COMMON AREA
- PHASE 2 ROADWAY COMMON AREA
- PHASE 3 ROADWAY COMMON AREA
- PHASE 4 ROADWAY COMMON AREA
- OTHER ROAD AND COMMON UTILITY AREAS
- PHASE LIFT LANE
- FTD ELEVATION



NOTE:

1. ELEVATIONS SHOWN ON THIS PLAN HAVE BEEN ADDED 500 TO ACTUAL ELEVATIONS.
2. COMMON AREA IS INCLUDED ROADWAY, MOATS, RETENTION BASINS, LANDSCAPED AREA, PARK, CWD CHANNEL, DRAINAGE SWALE AND UTILITY EASEMENTS.



PREPARED FOR:
 HONZEL DEVELOPMENT, LLC AND AFFILIATES
 C/O RINKER PROPERTIES
 41865 BOARDWALK STREET - SUITE 207
 PALM DESERT, CALIFORNIA 92260
 PHONE: 760/797-9100 FAX: 760/797-9101
 CONTACT: MIKE G. BRADY

PREPARED BY:
 HUNSAKER & ASSOCIATES
 ENGINEERS ARCHITECTS
 PLANNING ENGINEERING SURVEYING
 13001 HIGHWAY 100, SUITE 100, PALM DESERT, CA 92260
 PHONE: 760/797-9100 FAX: 760/797-9101

DESERT CITIES INDUSTRIAL PARK
PARCEL MAP NO. 34159
EXHIBIT C

