

Litigation (Non Required Civil Code Sec. 4525)
Ridgemont Community Association

Order: 4YC2CWLJV
Address: 26131 Del Rey # 86
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HANGER, STEINBERG, SHAPIRO & ASH, ALC

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RECEIPT ACKNOWLEDGED

DocuSigned by:
BY Prashna Raniga, Authorized Signer
69CE209C23934AC...
BY _____

July 1, 2021

VIA EMAIL ONLY

RIDGEMONT COMMUNITY ASSOCIATION
c/o ACCELL PROPERTY MANAGEMENT
Attn: Diana Coronado
23046 Avenida De La Carlota, Suite 700
Laguna Hills, CA 92653

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COURTNEY N. GARCIA

ROBERT T. HANGER
Founding Member, Retired

RE: Hackman v. Ridgemon Community Assoc., et al.
Our File No.: 398.0097

To whom it may concern:

This will confirm that this office has been retained by Allstate Insurance Company (“Allstate”) to represent and defend Ridgemon Community Association as against Plaintiffs’ claims, *under a reservation of rights*, pursuant to Ridgemon Community Association’s policy of insurance with Allstate (which has policy limits of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate), in the above-referenced matter. Pursuant to Allstate’s retention of this office, our office’s fees are being paid for by Allstate.

In the instant action, Plaintiffs allege that they have sustained injuries and damages due to the environmental condition of their unit, and alleges that Ridgemon Community Association was negligent. We continue to vigorously defend and dispute Plaintiffs’ allegations as to both liability and alleged damages.

Trial in this matter is currently set for September 27, 2021. A copy of Plaintiffs’ Fourth Amended Complaint is enclosed herewith for your reference.

Should you have any questions, please contact the undersigned.

Very truly yours,

Benson Y. L. Chan

BENSON Y. L. CHAN

BC
Enclosure

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9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

12 THOMAS J. HACKMAN; KATELIN
13 HACKMAN; THOMAS D. HACKMAN,

14 Plaintiffs,

15 v.

16 RIDGEMONT COMMUNITY
17 ASSOCIATION, a California corporation;
18 ACCELL PROPERTY MANAGEMENT,
19 INC., a California corporation; WILLIAM
20 LYON HOMES, INC., a California
21 corporation; THE WILLIAM LYON
22 COMPANY, a California corporation; and
23 DOES 1 through 100, Inclusive,

24 Defendants.

CASE NO. : 30-2016-00829687-CU-PO-CJC

**PLAINTIFFS' FOURTH AMENDED
COMPLAINT FOR DAMAGES FOR**

- 1. **BREACH OF CC&R'S**
- 2. **BREACH OF CONTRACT**
- 3. **STRICT LIABILITY**
- 4. **NEGLIGENCE**
- 5. **NUISANCE**

JURY TRIAL DEMANDED

25 Plaintiffs allege, aver and state as follows:

26 **SUMMARY OF COMPLAINT**

- 27 1. Plaintiffs bring this action based upon defendant's negligent and/or wrongful conduct as
28 alleged herein.
- 2. This complaint seeks restitution for a series of problems stemming from serious construction
and management defects at plaintiffs' condominium unit located at 26095 Las Flores A, Mission
Viejo, California (hereinafter the "PROPERTY") and commonly known as Ridgmont Community
Association.

- 3. Plaintiffs have suffered personal injuries and property damage from failure to act by the

1 community association and property manager, from improper repairs by the community association
2 and from construction defects from the initial construction.

3 4. As a result of the acts of the defendants, and each of them, plaintiffs have suffered persistent
4 health problems caused by a damp home environment and have had to vacate their home, property
5 damage, loss of rental income and have incurred other damages.

6 **JURISDICTION AND VENUE**

7 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the California
8 Constitution, Article VI, § 10, because this case contains causes not given by statute to other trial
9 courts.

10 6. All of the acts complained of in this complaint took place in the State of California.

11 **PARTIES**

12 7. Plaintiffs, THOMAS J. HACKMAN and KATELIN HACKMAN, at all times herein
13 mentioned, were residents of the State of California, County of Orange.

14 8. Minor Plaintiff JOHN DOE by and through his guardian ad litem KATELIN HACKMAN, is
15 using a fictitious name in this Complaint under rights to privacy granted by the Constitution of the
16 State of California due to his age and his medical privacy. If for any reasons Defendants cannot
17 accurately determine the identity of Plaintiff, their attorney can contact Plaintiff's attorney at the
18 address on the face sheet of this Complaint and the name of Minor Plaintiff JOHN DOE will be
19 provided.

20 9. Plaintiff JOHN DOE is a natural person aged seven, who at all times herein mentioned, was a
21 resident of the State of California, County of Orange, and was a minor.

22 10. Plaintiff, THOMAS D. HACKMAN, is the owner of record of the property which is the
23 subject matter of this action. At all times herein mentioned, he was a resident of the State of
24 California.

25 11. Defendant RIDGEMONT COMMUNITY ASSOCIATION (hereinafter "RIDGEMONT") is
26 a California corporation organized and existing under and by virtue of the laws of the State of
27 California, having its principal place of business within the County of Orange, State of California.
28 RIDGEMONT is composed of owners of 172 condominium living units, which units are located on

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1 property sometimes commonly known as "RIDGEMONT," located in Orange County, California.

2 12. Defendant ACCELL PROPERTY MANAGEMENT, INC. (hereinafter "ACCELL") is a
3 California corporation. ACCELL was, at all times relevant herein, the acting agent and property
4 manager for defendant, RIDGEMONT. RIDGEMONT contracted with ACCELL for the benefit of
5 Plaintiffs.

6 13. Defendants, WILLIAM LYON HOMES, INC. and THE WILLIAM LYON COMPANY
7 (hereinafter "LYON") is a business entity with its principal place of business in the County of
8 Orange, State of California.

9 14. Whenever within this Complaint reference is made to any act, deed, or transaction of any
10 corporation, organization, or individual, the allegation means that the corporation, organization or
11 individual engaged in the act, deed or transaction personally or by or through its officers, directors,
12 agents, employees or representatives.

13 15. In taking the described actions and in approving and ratifying the actions described herein,
14 defendants, and each of them, including those identified as DOES 1 through 100, conspired with
15 each other during the relevant time period described herein to conduct the wrongdoing alleged
16 herein.

17 16. The true names and capacities of defendants sued herein as DOES 1 through 100, pursuant to
18 California Code of Civil Procedure §414, inclusive, are presently unknown to plaintiffs, who
19 therefore sue these defendants by such fictitious names. Plaintiffs will seek to amend this Complaint
20 and include the DOE defendants' true names and capacities when they are ascertained. Each of the
21 fictitiously-named defendants is responsible in some manner for the conduct alleged herein and for
22 the injuries suffered by plaintiffs.

23 17. At all times mentioned in the causes of action alleged herein, each and every defendant was
24 an agent and/or employee of each and every other defendant. In doing the things alleged in the
25 causes of action stated herein, each and every defendant was acting with the consent, permission and
26 authorization of each of the remaining defendants. All actions of each defendant as alleged in the
27 causes of action stated herein were ratified and approved by every other defendant, whether
28 individual or corporate, by and through its officers or managing agents.

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COMMON ALLEGATIONS

1
2 18. The condominium which is the subject matter of this action was purchased by plaintiff,
3 THOMAS D. HACKMAN in approximately August, 2012. After THOMAS D. HACKMAN
4 purchase the unit, the plaintiffs, THOMAS J. HACKMAN and KATELIN HACKMAN, moved into
5 the PROPERTY in September, 2012.

6 19. Plaintiffs were forced to move out of the PROPERTY due to a damp home environment
7 causing an uninhabitable condition at the PROPERTY. The damp home environment and odors were
8 caused by excessive moisture, which was not the fault of plaintiffs, and it rendered the PROPERTY
9 uninhabitable. Plaintiffs are informed and believe that the damp home environment was occurring in
10 areas including, but not limited to, plaintiffs’ walls, garage, ceiling and other parts of the home.
11 Conditions in the home were in violation of applicable codes, standards, and laws, including
12 standards regarding habitability.

13 20. The conditions in the home also caused the amplification of bacteria, dust mites and other
14 biological organisms which are dangerous to human health. The exposure caused plaintiffs to suffer
15 toxic, allergic, irritant, and/or infectious responses. The contamination has also resulted in loss of use
16 and other injuries to plaintiffs.

17 21. The conditions in the home constituted a nuisance in that they were offensive, harmful,
18 dangerous and hazardous. The home was unreasonable damp, moist, humid and musty. These and
19 other factors caused extreme biological contamination.

20 22. Defendants, and each of them, were aware that water damage and a damp home environment
21 constitute a health hazard.

22 23. The laws of the State of California, including but not limited to, Health & Safety Code §
23 17920.3 and the Uniform Housing Code, require defendants to provide and maintain habitable
24 premises for the plaintiffs. Defendants therefore owed a duty of care under the statutes and laws
25 mentioned above to provide and maintain habitable premises for the plaintiffs.

26 24. At all relevant times, the plaintiffs belonged to the class of persons for whom those statutes
27 were designed to protect. The harms which have befallen plaintiffs are of the types these statutes
28 were designed to protect against. Accordingly, defendants’ conduct constitutes negligence per se.

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1 25. During plaintiffs' tenancy at the subject PROPERTY maintained and managed by defendants,
2 substantial habitability violation existed in plaintiffs' rental unit and about the premises which
3 constituted violations of housing laws, including but not limited to, Health & Safety Code§

4 26. 17920.3 and the Uniform Housing Code.

5 27. By defendants' acts and omissions, defendants materially breached the requirement of Health
6 & Safety Code § 17920.3 and the Uniform Housing Code, and defendants' duties to plaintiffs. By
7 that breach, defendants proximately caused the damages and injuries to the plaintiffs herein.

8 28. Plaintiffs repeatedly complained to defendants about required repairs to the home including
9 problems with excessive moisture accumulation inside the PROPERTY. However, the defendants
10 did not adequately respond to these complaints nor properly remedy the deficiencies. Defendants'
11 inaction caused the damp home environment to become even worse.

12 29. There exists, and at all times herein mentioned existed, a unity of interests and ownership
13 between all of the defendants, including any individual, partnership and/or corporate defendants, and
14 their principals, including all DOE defendants, such that all individuality and separation ceased and
15 defendants became the alter egos of the other defendants and their principals.

16 30. Said defendants are, and at all times herein mentioned was, so inadequately capitalized that,
17 compared to the business to be done by them and where such business was being conducted in
18 relation to plaintiffs, and the risk of loss attendant thereto, the available capital of the entities was
19 practically non-existent. Partnership, corporate and other formalities were disregarded such that the
20 separate identities of the entities ceased to exist and such entities became the alter egos of the other
21 defendants and their principals, and vice versa.

22 31. Adherence to the fiction of any separate existence of any of the defendants as a distinct entity
23 apart from the other defendants or their principals and/or the fiction that defendants or their
24 principals and/or the fiction that defendant limited partnerships have "limited" liability would permit
25 an abuse of the corporate and/or partnership privilege and other privileges allowing the formation of
26 business entities under California law. Injustice would also result given that defendants and their
27 principals have specifically created the multiple entities in an effort to avoid their liabilities and
28 responsibilities. Such a result would promote injustice.

1 32. Whenever in this complaint reference is made to any act or omission of a particular
2 defendant, such allegation shall be deemed to mean that said defendant, and its officers, directors,
3 agents, representatives, and employees, did authorize such act while actively engaged in the
4 management direction or control of that defendant, and while acting within the course and scope of
5 their employment.

6 33. The PROPERTY was built and constructed by defendant LYON and DOES 1-10.

7 34. Defendant Lyon and DOES 1-10 were negligent in the construction of the PROPERTY and
8 as a result of the negligent construction, plaintiffs have suffered damages. On information and belief,
9 the negligent construction includes but is not limited to:

10 a. The HVAC system is an open-air plenum design drawing air from in between the
11 walls and attic with no ducting. Any mold blown into the attic from before remediation could have
12 been sucked back through the new system.

13 b. The condensate line from the original HVAC unit was never properly vented
14 causing water to spill out which led to mold in the air box below the HVAC.

15 c. Sprinkles spray directly on the side of the home and windows constantly.

16 d. The roofing system was not designed or built properly as every penetration point
17 was leaking, and other problems.

18 35. Prior to plaintiffs' tenancy, other owners of condominium living units at RIDGEMONT had
19 had a variety of construction problems including, but not limited to, defective waterproofing, and
20 other problems with leaking and water intrusion in various units including plaintiffs' unit. As a result
21 of these defects, RIDGEMONT undertook remedial repairs of the complex. Said repairs have not
22 been properly effectuated and have been incorrect, disruptive and mismanaged and thereby caused
23 plaintiffs damages.

24 36. RIDGEMONT contracted with ACCELL to manage the property, including maintenance and
25 repairs of the Common Areas for the benefit of plaintiffs.

26 37. RIDGEMONT, ACCELL, and DOES 11-30 had a duty to properly and competently repair
27 the problems at the RIDGEMONT Condominiums.

28 38. RIDGEMONT, ACCELL and DOES 11-30 failed to properly repair the construction defects

1 at the RIDGEMONT Condominiums.

2 39. RIDGEMONT, ACCELL and DOES 11-30's failure to properly repair the construction
3 defects at the RIDGEMONT Condominiums caused damages to plaintiffs.

4 40. During the plaintiffs' residency at RIDGEMONT, there have been construction defects and
5 other problems causing numerous water leaks and a damp home environment in and throughout their
6 condominium.

7 41. In the first year of their tenancy, the plaintiffs' son, JOHN DOE 1 (DOB: 10/25/11), who'd
8 previously been a very healthy baby, had a minimum of six visits to the emergency room with
9 breathing complaints. No one could tell the plaintiffs what was causing their son's suddenly
10 seemingly deteriorating medical condition.

11 42. Additionally, the plaintiffs began having problems with their health that they hadn't
12 experienced before their tenancy.

13 43. Finally, on or about January 14, 2014, JOHN DOE 1's pediatrician suggested to the family
14 that they should have environmental testing performed at their home.

15 44. After the plaintiffs were alerted to this potential for a cause of all of the family's health issues,
16 they contacted JLC Investigations (hereinafter "JLC") to have environmental testing performed.
17 Around this point, the plaintiffs moved out of their home due to fear of further health complications
18 from their exposure to it.

19 45. On January 31, 2014, JLC went out to the PROPERTY to conduct a thorough environmental
20 analysis. At or about this time, JLC performed air testing and moisture meter testing.

21 46. On or about February 5, 2014, the plaintiffs received JLC's written report and lab results.
22 Pursuant to the written report, there were several areas that needed repairs. JLC also found water
23 staining on a wall that adjoined the garage, as well as massive water staining in the garage.

24 47. Upon receipt of the JLC report, it was given to Pam Cooper of ACCELL, RIDGEMONT's
25 agent. At the time Ms. Cooper reviewed the JLC report, she advised the plaintiffs that RIDGEMONT
26 was responsible for all plumbing and leaks. She further stated that RIDGEMONT was responsible
27 for completing all of the remediation recommendations contained in the JLC report.

28 48. RIDGEMONT, through ACCELL, made arrangements for a plumber to go out to the

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1 PROPERTY to open up a wall where the JLC report advised of water staining. After the wall was
2 opened up inside the home underneath the stairway and extending to the garage (the wall adjoining
3 both the interior of the home and the garage), the plumber found a leaking pipe from the drain of the
4 upstairs guest bathroom tub. The leak was then repaired.

5 49. Upon information and belief, ACCELL then hired Flood Pros to go to the PROPERTY to
6 inspect it for mold. At the time of their inspection, Flood Pros advised the plaintiffs there was no
7 mold where the wall had been opened up.

8 50. The Flood Pros inspection was not properly performed as there was visible mold inside the
9 wall that had been caused to be opened up by ACCELL.

10 51. At this point, JLC was called out to the PROPERTY by plaintiffs again to take a look at the
11 wall cavity. JLC confirmed there was mold inside the wall cavity as he could see it himself.

12 52. At this point, and while his tenants were staying elsewhere, Thomas D. Hackman decided to
13 change the HVAC system and ductwork throughout the PROPERTY at the recommendation of JLC
14 in its report.

15 53. As soon as the HVAC system and ductwork were replaced, the family attempted to move
16 back into the PROPERTY, believing the home was once again habitable. However, within six hours
17 of making this attempt, JOHN DOE 1 became sick again and the family returned to their family
18 member's home. Within 48 hours, JOHN DOE 1 had to be taken to the emergency room again.

19 54. At this point, THOMAS D. HACKMAN contacted Flood Pros to let them know this home
20 was still making his family sick, that no documentation was provided as a result of Flood Pros'
21 earlier inspection, that it was illegal to fail to provide a written report, and he wanted answers. The
22 manager of Flood Pros responded that he would return to the PROPERTY the next day.

23 55. On or around April 11, 2014 Flood Pros created an estimate of work to be performed at the
24 PROPERTY.

25 56. Upon information and belief, the next time Flood Pros returned to the PROPERTY, Flood
26 Pros advised that some of the remediation recommendations had been approved by RIDGEMONT
27 through ACCELL, i.e., but not all of them. Flood Pros commenced doing remediation that day in the
28 garage only, but did not do any of the work outlined in its estimate for remediation needed in the

1 kitchen area. Flood Pros advised it would not complete all of the remediation recommendations
2 because it was not the responsibility of RIDGEMONT to make all the required repairs.

3 57. During the process of conducting the remediation, Flood Pros admitted it found mold in the
4 garage and under the furnace. Upon information and belief, it is the custom and practice of Flood
5 Pros to prepare a map of all the places it finds mold during a remediation project, but that document
6 has not been provided to plaintiffs. Despite plaintiffs' requesting the mold mapping which should
7 have been created by Flood Pros, RIDGEMONT and ACCELL continue to refuse to provide it to the
8 plaintiffs. It was not until the remediation was completed that the wall adjoining the interior of the
9 PROPERTY and the garage was closed.

10 58. Once the remediation was completed, and further as a result of JLC's recommendation, the
11 entire carpeting in the PROPERTY was removed and new carpeting was installed.

12 59. Upon information and belief, the mold that was found during the remediation process had
13 been circulated throughout the PROPERTY prior to the remediation for several years.

14 60. Upon information and belief, Flood Pros billed RIDGEMONT \$3,793.94 directly for its work
15 at the PROPERTY for its remediation project.

16 61. In or around May, 2014, the plaintiffs moved back into the PROPERTY. However, when the
17 plaintiffs moved back into their home, there were still many items left in disrepair by Flood Pros. For
18 instance, walls had not been painted, ceilings were left unfinished and wires were hanging out.

19 62. Prior to the temporary move, JOHN DOE 1 could not sleep through the night on any night.
20 Once the family relocated, however, JOHN DOE 1 began sleeping soundly again, like he'd slept
21 prior to September, 2012. So, from about February, 2014 to May, 2014, JOHN DOE 1 was able to
22 sleep without his parents holding him upright all night long.

23 63. For several months after moving back into the PROPERTY, JOHN DOE 1 was able to sleep
24 again through the night and things seemed to be going along fine. All three occupants of the
25 PROPERTY seemed to have no major physical issues that appeared to them to stem from their
26 exposure to anything at the PROPERTY.

27 64. In or around October, 2014, however, JOHN DOE 1 began to get intermittently sick again
28 and started having sleeping problems again. The plaintiffs were also not well.

1 65. After watching their son's health decline for a couple of months, and theirs as well, in
2 January, 2015, they decided to permanently move out of the home that they then believed was
3 causing their illnesses.

4 66. Another environmental expert, Rob Timmons, was called by plaintiffs to perform testing on
5 January 23, 2015. In his report, he found the northeast corner of the living room drywall excessively
6 wet and recommended further testing and remediation.

7 67. As a result of Mr. Timmons' report, THOMAS D. HACKMAN called RIDGEMONT through
8 ACCELL to give notice that problems still persisted at the PROPERTY that had not been properly
9 remediated by RIDGEMONT in the prior work.

10 68. Drymasters was then hired by RIDGEMONT to conduct a further inspection. Drymasters
11 removed about two feet up from the floor of the drywall along the entire north wall of the dining
12 room/living room, from part of the west wall of the dining room, and from part of the east wall in the
13 living room.

14 69. Thereafter, on or about May 29, 2015, ACCELL hired Envirocheck to conduct an
15 environmental survey of the PROPERTY while the drywall was still removed. The Envirocheck
16 report dated June 3, 2015, found "elevated moisture levels conducive to fungal growth" in the living
17 room and dining room/kitchen areas that needed remediation. Envirocheck supplied a scope of work
18 for the remediation that was required.

19 70. Upon information and belief, after the June 3, 2015 Envirocheck report, RIDGEMONT failed
20 to conduct the remediation scope of work recommended therein. Instead, upon RIDGEMONT's
21 request, Drymasters went back to the PROPERTY and simply closed up the walls. Subsequent to
22 having the walls closed up, nothing has been done by RIDGEMONT to repair the PROPERTY.

23 71. Plaintiffs were unaware of the cause of their illnesses until January 14, 2014 when it was
24 suggested by a healthcare provider that their home may be the cause of some health problems and
25 environmental testing was recommended.

26 72. Prior to the period of repair, which repairs uncovered mold and a damp home environment,
27 plaintiffs experienced numerous allergic reactions, respiratory and/or other health problems for
28 which plaintiffs sought and continue to receive medical attention. Plaintiffs have been informed by

1 medical providers that they suffered these illnesses as a direct result of their exposure to a damp
2 home environment.

3 73. At all relevant times herein, RIDGEMONT, ACCELL, and DOES 11-30 had a duty to
4 properly repair and maintain the Common Areas, however, RIDGEMONT, ACCELL and DOES 11-
5 30 breached their duties and have failed to properly repair and maintain the Common Areas and have
6 caused plaintiffs damages, including the loss of use of their home.

7 74. The governing documents of RIDGEMONT contain an attorney's fees provision in the event
8 of litigation arising out of the agreement, as set forth infra.

9 75. As a direct and proximate result of the defendants' acts, and each of them, plaintiffs have
10 sustained both bodily injuries and property damage.

11 **FIRST CAUSE OF ACTION**

12 **BREACH OF GOVERNING DOCUMENTS**

13 **(THOMAS D. HACKMAN vs. RIDGEMONT AND DOES 11-30)**

14 76. Plaintiffs incorporate by reference all paragraphs above as though fully set forth herein.

15 77. The documents setting forth the rights, duties and obligations of the parties hereto consist of
16 the Declaration of Covenants, Conditions and Restrictions, Bylaws and Articles of Incorporation.

17 78. Attached hereto and incorporated herein as Exhibit "A" is a true and correct copy of the
18 pertinent sections of the Declaration of Covenants, Conditions and Restrictions (hereinafter
19 "CC&Rs") of RIDGEMONT.

20 79. Section C of the Preamble states in relevant part that the CC&Rs inure to the benefit of
21 THOMAS D. HACKMAN and give him a direct right of action against RIDGEMONT:

22
23 All of the limitations, restrictions, reservations, rights, easements, conditions and
24 covenants hereto shall run with and burden the Property and shall be binding on and
25 for the benefit of all of the Property and all Persons having or acquiring any right, title
or interest in the Property, or any part thereof, and their successive owners and
assigns.

26 80. Section 1.15 defines "Common Areas" as:

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[A]ll areas on the Project, except the Units. Common Areas shall include, without limitation, for maintenance purposes of the Association, but not necessarily by way of fee title, all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the Project Improvements wherever located ..., the land upon which the Project Improvements are located and the airspace above the Project Improvements, all bearing walls, columns, unfinished floors, the roofs, foundation slabs, party walls, utility walls, foundations, private streets or driveways, walkways, common stairways, parking areas and landscaping on those areas of the Project which are not defined as a part of the Units.

81. Section 1.34 of the CC&Rs defines “Improvements” as, “all structures and appurtenances thereto of every type and kind, including but not limited to, buildings...”

82. Section 2.08 of the CC&Rs States in relevant part:

The Association shall paint, maintain, repair and replace the Common Property and Improvements thereon or shall contract for such maintenance, repair and replacement to assure maintenance of the Common Property and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget on file with and approved by the DRE. ... Association maintenance, repairs and improvements shall include, without limitation, the right, without obligation, to ... repair and payment for all centrally metered utilities, water charges, and mechanical and electrical equipment in the Common Property; payment of all charges for all utilities which serve individual Units but which are subject to a common meter ...

83. Section 2.10 of the CC&Rs states in relevant part:

Each Owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, all portions of his Unit, as well as the windows, doors, light fixtures actuated from switches controlled from, or separately metered to, such Owner's Unit, and the interior surfaces of the walls, ceilings, floors, doors and permanent fixtures, in a clean, sanitary and attractive condition in accordance with the Condominium Plan and the original construction design of the Improvements in the Project. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for the alteration or repair by the Architectural Committee. ... However, no Owner shall be responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of his assigned Restricted Common Areas. ...

84. Section 2.11 of the CC&Rs allows RIDGEMONT to contract with a property manager for common area maintenance and repairs. It provides in relevant part:

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Use of Agent. The Board of Directors, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board.

85. Section 10.01 of the CC&Rs states in relevant part:

Except as otherwise proved in this Declaration, in the event of any destruction of any portion of the Property, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. ...

86. Section 15.01 of the CC&Rs states provides for attorney’s fees to the prevailing party in the event of a lawsuit for a breach thereof, in relevant part:

Failure to comply with any of the terms of the Restrictions by an Owner, his family, guests, employees, invitees or tenants, shall be grounds to relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof. ... Any judgement rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys’ fees in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as ... costs of collection and court costs. ... Each Owner shall have a right of action against the Association to comply with the Restrictions.

87. Attached hereto and incorporated herein as Exhibit "B" is a true and correct copy of the pertinent sections of the Bylaws of RIDGEMONT. Section 4.03(h) of the RIDGEMONT bylaws give the Board "the power and duty to contract for and pay for maintenance, legal, accounting, gardening and common utilities services, and for materials and supplies and other Common Expenses relating to the Common Property ... and to employ personnel necessary for the operation of the Property, including legal and accounting services, and to contract for and pay for Improvements on the Common Property."

88. Section 4.03(b) of the Bylaws provides, in pertinent part, it is the duty of the Board to" ... conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor ... "

89. Section 4.04 of the Bylaws provides, in relevant part, "The Board of Directors may engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board shall authorize."

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1 90. RIDGEMONT contracted with property manager ACCELL to ensure the enforcement of the
2 CC&Rs, including the maintenance and repair of Common Areas.

3 91. The contract between RIDGEMONT and ACCELL was made for the benefit of owners of the
4 PROPERTY, including THOMAS D. HACKMAN, in that ACCELL, as RIDGEMONT's property
5 manager would ensure that required maintenance and repairs were timely and properly completed.
6 Therefore, THOMAS D. HACKMAN is a Third Party Beneficiary of the contract between
7 RIDGEMONT and ACCELL, and has standing to enforce the CC&Rs against ACCELL.

8 92. ACCELL, as property manager, has a contractual duty to oversee all notifications,
9 correspondence with insurers, contracts and contacts with contractors and to advise RIDGEMONT
10 regarding the management of all repairs and related problems with plaintiffs' unit. On information
11 and belief, ACCELL is also hired to recommend and advise RIDGEMONT on the hiring and
12 supervision of contractors. These duties are to be carried out by ACCELL, for the benefit of owners,
13 including THOMAS D. HACKMAN.

14 93. RIDGEMONT and its agent, ACCELL, failed to hire proper contractors to provide goods and
15 services and failed to properly supervise the contractors' work.

16 94. RIDGEMONT breached its contractual obligations to THOMAS D. HACKMAN by failing
17 to maintain and repair the Common Area.

18 95. ACCELL breached its contractual obligations to RIDGEMONT by failing to maintain and
19 repair the Common Area. According to the CC&Rs, RIDGEMONT, ACCELL and DOES 11-30, as
20 officers, directors and agents of RIDGEMONT, had a duty "to restore and repair the [plaintiff's unit]
21 to its former condition, as promptly as practical." (See Exhibit A, CC&Rs, Section 10.01.) These
22 defendants breached their duty to plaintiff, as the owner of the unit at RIDGEMONT, in that each of
23 them failed to make the necessary repairs to the Common Areas and related damages to plaintiff's
24 personal property within a reasonable time. The delays caused by these defendants' failure to act
25 promptly and properly caused additional damage to plaintiff who lost rental income when his tenants
26 were forced to move out.

27 96. Defendant ACCELL, as RIDGEMONT's agent, had a duty to ensure RIDGEMONT
28 complied with governing documents on file on behalf of RIDGEMONT.

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1 97. Plaintiff is informed and believes and thereon alleges, ACCELL, through Pam Cooper and
2 Loit Kaskla, and DOES 11-30 have failed to act in good faith in that Pam Cooper personally
3 promised plaintiffs that all necessary repairs would be made quickly and paid for by RIDGEMONT.
4 To date, RIDGEMONT has failed to make the necessary and required payments for the repairs and
5 has further failed to reimburse plaintiff for his out-of-pocket expenses.

6 98. As a proximate result of ACCELL's and RIDGEMONT's failure to maintain and repair the
7 Common Areas and hire competent contractors, plaintiff was forced to hire and expend funds
8 investigating the cause of the defective conditions and methodology of repair to said defects, the
9 precise amount of which has not yet been ascertained, but will be established at trial according to
10 proof.

11 99. As a proximate result of ACCELL's and RIDGEMONT's failure to maintain and repair the
12 Common Areas, plaintiff has sustained damages in an amount to be established at trial according to
13 proof.

14 100. As a further proximate result of RIDGEMONT's breach of the CC&Rs, plaintiff has been
15 required to incur, and will continue to incur, attorneys' fees, expert fees, costs and expenses in
16 connection with the enforcement of the CC&Rs and RIDGEMONT's violation thereof, all of which
17 shall be established in an amount according to proof at trial.

18
19 **SECOND CAUSE OF ACTION**

20 **BREACH OF CONTRACT**

21 **(THOMAS D. HACKMAN vs. RIDGEMONT and ACCELL)**

22 **ALLEGATIONS AS AGAINST RIDGEMONT ONLY**

23 101. Plaintiffs incorporate by reference all paragraphs above as though fully set forth herein.

24 102. As alleged fully above, plaintiff entered into contracts with defendants RIDGEMONT and
25 ACCELL. (The contract between RIDGEMONT and plaintiff is written and is established by the
26 attached Exhibits "A" and "B").

27 103. Defendants, and each of them, breached the contracts by the acts as stated in the above-
28 referenced paragraphs.

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1 104. Plaintiff has duly performed all covenants and obligations which he agreed to perform by
2 taking an ownership interest in the PROPERTY pursuant to the contracts, except those obligations
3 and covenants which are excused by the conduct of the defendants and each of them.

4 105. As a direct and consequential result of defendants' breach, plaintiff has been damaged in a
5 substantial amount according to proof at trial.

6 **ALLEGATIONS AS AGAINST ACCELL ONLY**

7 106. As alleged fully above and hereinafter, plaintiff entered into contracts with defendants
8 RIDGEMONT and ACCELL. (The written contracts between RIDGEMONT and plaintiff are
9 attached as Exhibits "A" and "B" and are fully incorporated herein as if fully set forth.)

10 107. RIDGEMONT also contracted with ACCELL so that ACCELL can act as RIDGEMONT's
11 management agent for the properties. (The written contract between RIDGEMONT and ACCELL is
12 attached as Exhibit "C" and is fully incorporated herein as if fully set forth, and will hereinafter be
13 referred to as "MANAGEMENT AGREEMENT.") Based on the contractual terms of the
14 MANAGEMENT AGREEMENT, the contract was for the benefit of all property owners including
15 plaintiff THOMAS D. HACKMAN.

16 108. RIDGEMONT contracted with ACCELL to manage the properties, including maintenance
17 and repairs of the Common Areas for the benefit of plaintiff and all other property owners.

18 109. Section 2.11 of the CC&Rs allows RIDGEMONT to contract with a property manager for
19 common area maintenance and repairs. It provides in relevant part:

20 Use of Agent. The Board of Directors, on behalf of the Association, may contract with a
21 Manager for the performance of maintenance and repair and for conducting other activities
22 on behalf of the Association, as may be determined by the Board.

23 110. RIDGEMONT contracted with property manager ACCELL to ensure the enforcement of the
24 CC&Rs, Bylaws and other governing documents, including maintenance and repair of Common
25 Areas.

26 111. The MANAGEMENT AGREEMENT between RIDGEMONT and ACCELL was made for
27 the benefit of owners of the PROPERTY, including THOMAS D. HACKMAN, in that ACCELL, as
28 RIDGEMONT's property manager, would ensure that required maintenance and repairs were timely

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1 and properly completed.

2 112. Specific portions of the MANAGEMENT AGREEMENT between RIDGEMONT and
3 ACCELL (Exhibit "C") which support plaintiff's position that he is an intended beneficiary of the
4 MANAGEMENT AGREEMENT, include, but are not limited to, the following:

5 **Article I**

6 **APPOINTMENT OF MANAGEMENT AGENT**

7 1.2 ACCELL PROPERTY MANAGEMENT, INC. shall be the agent acting on behalf of the
8 Association as a disclosed principal with respect to the matters covered by this Agreement....

9 1.3 Management Agent shall assist the Board in the management, operation and
10 administration of the Association. Management Agent shall perform its duties under this Agreement
11 in accordance with the Association's governing documents, including its declaration, by-laws, rules
12 and regulations and other duly enacted policies and procedures (collectively referred to as the
13 Governing Documents"). Management Agent shall be available at reasonable times to confer with the
14 Board and its representatives regarding the performance of the services set forth herein.

15 **Article II**

16 **RESPONSIBILITIES OF MANAGEMENT AGENT**

17 1.4 Guide and assist the Board and its duly appointed committees in the development,
18 implementation and enforcement of policies and procedures, rules and regulations, and architectural
19 guidelines and standards.

20 1.5 Assist in the administration of the provisions of the Declaration, Articles of Incorporation,
21 By-laws, Rules and Regulations and policies of the Association ("Governing Documents").

22 1.11 Assist in resolving individual Owner request as they pertain to the administration of the
23 Association, its common elements, and Governing Documents.

24 3.1 Receive and process Association members requests concerning the Association's covered
25 property and operations.

26 3.2 Provide two (2) to three (3) walk throughs per month of the covered property. Walk
27 throughs shall involve review of Association member's compliance with Association's Architectural
28 Standards and Rules & Regulations, review of common area landscaping to ascertain whether proper

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1 maintenance and care has been provided; review of common area buildings and hardscapes to
2 identify maintenance needs; and review of recreational facilities to ascertain proper maintenance and
3 care has been provided....

4 3.4 Assist and counsel the Board of Directors in determining the level of goods and services
5 required by the Association.

6 3.6 Management Agent shall administer the contracts of persons or companies performing
7 routine services for the Association.

8 113. Therefore, the MANAGEMENT AGREEMENT is to inure to the benefit of all property
9 owners including plaintiff THOMAS D. HACKMAN as intended beneficiaries of the
10 MANAGEMENT AGREEMENT since the agreement appoints ACCELL to manage the properties
11 and since the agreement specifically mentions "Owners" with regards to resolving any issues the
12 "Owners" have pertaining to the administration of the Association, its common elements, and
13 Governing Documents, which would include the CC&Rs and Bylaws (and which documents directly
14 apply to all property owners including THOMAS D. HACKMAN).

15 114. Defendants, and each of them, breached the contracts by the acts as stated in the above-
16 referenced paragraphs, including failing to maintain and repair the Common Areas.

17 115. Plaintiff has duly performed all covenants and obligations which he agreed to perform by
18 taking an ownership interest in the PROPERTY pursuant to the contracts, except those obligations
19 and covenants which are excused by the conduct of the defendants and each of them.

20 116. As a direct and consequential result of defendants' breach, plaintiff has been damaged in a
21 substantial amount according to proof at trial.

22
23 **THIRD CAUSE OF ACTION**

24 **STRICT LIABILITY**

25 **(All Plaintiffs Against LYON AND DOES 1-10)**

26 117. Plaintiff incorporates by reference all paragraphs above as though fully set forth herein.

27 118. Defendants, and each of them, knew and intended that the units and common areas of the
28 RIDGEMONT condominium would be used as single-family residences and further knew and

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1 intended that the various component parts would be incorporated so that the purchasers at
2 RIDGEMONT, and/or their successors assigns or tenants, would have water-tight, secure, useable
3 and otherwise habitable units and common areas.

4 119. Defendants, and each of them, knew and intended that the units and common areas of the
5 RIDGEMONT condominiums would be purchased by the unit's owners without sufficient inspection
6 to determine the existence of any defects, and then leased in that same condition.

7 120. The common areas and units at RIDGEMONT are defective and defendants, and each of
8 them, have defectively designed, manufactured, constructed, and installed HVAC systems, roofing,
9 walls and planters which are not adequately waterproofed and allow water intrusion into the walls
10 and living units and thereby promoting a damp home environment thereby causing plaintiffs to suffer
11 severe bodily injuries and property damage in an amount to be proven at trial. In addition, plaintiffs
12 have incurred costs to investigate and determine the necessary repairs for the defective conditions.

13
14 **FOURTH CAUSE OF ACTION**

15 **NEGLIGENCE**

16 **(All Plaintiffs Against ALL DEFENDANTS)**

17 121. Plaintiffs incorporate by reference all paragraphs above as though fully set forth herein.

18 122. Defendants, and each of them, had a duty to use due care in dealing with plaintiffs as alleged
19 fully above and including, but not limited to the following:

- 20 a. Properly building and repairing the PROPERTY;
- 21 b. Properly containing and eradicating the damp home environments at plaintiffs’
22 condominium unit; and
- 23 c. Failing to adequately repair continuing problem.

24 123. Defendants, and each of them, grossly breached their duties to the plaintiffs and fell below
25 the standard of care in each of their industries in the actions complained of.

26 124. Defendants' breach of their duties proximately caused plaintiffs damages including both
27 bodily injury and property damages as further described hereinabove in an amount to be proven at
28 trial. In addition, plaintiffs have been required to hire experts to investigate and determine the cause

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1 of their bodily injury and property damages.

2

3

FIFTH CAUSE OF ACTION

4

NUISANCE

5

(All Plaintiffs Against ALL DEFENDANTS)

6

125. Plaintiff incorporates by reference all paragraphs above as though fully set forth herein.

7

126. Conditions constituting a nuisance are defined by Civil Code §3479, which states:

8

Anything which is injurious to health ... or is indecent or offensive to the senses, or an

9

obstruction of the free use of property, so as to interfere with the comfortable enjoyment of life or

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property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable

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lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a

12

nuisance. Civil Code §3479 (Emphasis added.)

13

127. Defendants, and each of them, did acts as alleged fully above and thereby caused and created

14

a condition of a damp home environment which was injurious to plaintiffs' health and was offensive

15

to plaintiffs' senses so as to interfere with the comfortable enjoyment of their lives and property and

16

constituting a private nuisance.

17

128. The plaintiffs did not consent to the defendants' actions or inactions.

18

129. The seriousness of the harm caused by the defendants outweighed the public benefit, if any.

19

130. In creating said nuisance, defendants, and each of them caused plaintiffs to suffer damages,

20

both bodily injuries, loss of wages, loss of use of their home, costs to hire experts to determine the

21

cause and repair of the conditions and property damage in an amount to be proven at trial.

22

23

PRAYER FOR RELIEF

24

Wherefore, plaintiffs pray for judgment and relief on all causes of action as follows:

25

1. Economic damages in a sum to be determined at the time of trial;

26

2. General damages in a sum to be determined at the time of trial, including fees and costs of

27

expert hired to investigate and recommend repair methods;

28

3. For plaintiffs' costs of suit incurred herein;

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- 4. Reasonable attorney's fees;
- 5. Pre-judgment interest and post-judgment interest;
- 6. All such other and further relief as this Court may deem just and proper.

Dated: September 11, 2019

BISH LAW


By: 
 Stacey R. Cutting
 Timothy R. Vrastil
 Attorneys for Plaintiffs

EXHIBIT A

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WHEN RECORDED, MAIL TO:

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& PETERBAUGH (RSJ)
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MRS. WILE MRS. G. W. OAK
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AM
County Recorder
Orange County, California
J. A. ...

(Space Above For Recorder's Use)

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS

FOR

RIDGEMONT (TRACT 10647)

Tract 663527-005996

21925/157/01518/15665
dn1/08-14-84

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR

WEDGEMONT

THIS DECLARATION is made by THE WILLIAM LYON COMPANY, a California corporation ("Declarant").

P R E A M B L E:

A. Declarant is the owner of certain real property ("Phase 1") located in unincorporated Orange County, California, described as follows:

Lots 8, 19 and a portion of 7 of Tract No. 10647, as shown on a Subdivision Map filed on May 28, 1981, in Book 488, At Pages 22 to 30, inclusive, of Miscellaneous Maps, in the Office of the Orange County Recorder, as modified by and described as Parcel No. 3 in that certain Lot Line Adjustment No. 83-51, which was filed on December 23, 1983, as Instrument No. 83-582205, in the Office of the Orange County Recorder.

B. It is the desire and intention of Declarant to subdivide the Property (as hereinafter defined) into condominium estates and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the condominium estates created.

C. Declarant hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, reservations, rights, easements, conditions and covenants, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including without limitation the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all persons having or acquiring any right, title or interest in the Property, or any part thereof, and their successive owners and assigns.

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Section 1.09. Association Property. "Association Property" shall mean all of the real and personal property and improvements (other than the Common Areas) which the Association may own from time to time for the common use and enjoyment of the Members as provided herein. Any Association Property which the Association may own shall be deemed to be "Common Area" in the Lake Declaration.

Section 1.10. Beneficiary. "Beneficiary" shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgage or Beneficiary.

Section 1.11. Board or Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 1.12. Budget. "Budget" shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration, which Budget shall be prepared pursuant to the Bylaws.

Section 1.13. Bylaws. "Bylaws" shall mean the Bylaws of the Association as adopted by the Board initially in the form of Exhibit "B" attached hereto, as such Bylaws may be amended from time to time.

Section 1.14. Close of Escrow. "Close of Escrow" shall mean the date on which a deed is recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DSE.

Section 1.15. Common Areas. "Common Areas" shall mean all areas on the Project, except the Units. Common Areas shall include, without limitation, for maintenance purposes of the Association, but not necessarily by way of fee title, all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the Project improvements wherever located (except the outlets thereof when located within the Units), the land upon which the Project Improvements are located and the airspace above the Project Improvements, all bearing walls, columns, unfinished floors, the roofs, foundation slabs, party walls, utility walls, foundations, private streets or driveways, walkways, common stairways, parking areas and landscaping on those areas of the Project which are not defined as a part of the Units. The Common Areas are defined as "Common Area" in the Lake Declaration.

Section 1.16. Common Areas, Restricted. "Restricted Common Areas" shall mean those portions of the Common Areas

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Section 1.30. FHLMC. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

Section 1.31. Fiscal Year. "Fiscal Year" shall mean the fiscal accounting and reporting period of the Association, selected by the Board from time to time.

Section 1.32. FNMA. "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

Section 1.33. GSA. "GSA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successor to such association.

Section 1.34. Improvements. "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, carports, swimming pools, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, swings, stairs, decks, landscaping, hedges, windbreaks, the exterior surfaces of any visible structure and the paint on such surfaces, planted trees and shrubs, poles, signs, and water softener fixtures or equipment.

Section 1.35. Lake Association. "Lake Association" shall mean Lake Mission Viejo Association, a California corporation, its successors and assigns.

Section 1.36. Lake Declaration. "Lake Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Lake Mission Viejo Association, dated November 16, 1976, Recorded on November 16, 1976, as Instrument No. 22433, in Book 11953, Pages 889 et seq., of Official Records of Orange County, California.

Section 1.37. Maintenance Funds. "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Section 5.02 hereof.

Section 1.38. Manager. "Manager" shall mean the person, employed by the Association, pursuant to and limited by Section 2.11 hereof, and delegated the duties, power or functions of the Association as limited by said section.

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in the Properties. The Delegate shall receive no salary or compensation for services as Delegate, provided that (1) nothing herein shall be construed to preclude any Delegate from serving the Lake Association, or the Association, or Delegate District No. 55 in some other capacity and receiving compensation therefor, and (2) any Delegate may be reimbursed for actual expenses incurred in the performance of his duties as Delegate. A Delegate shall be elected by the vote of a majority of a quorum of the Members at the first annual meeting of the Members and at each subsequent annual meeting. The Delegate shall serve a term of one (1) year or until a successor has been elected and qualified. Any person serving as Delegate may be re-elected and there shall be no limitation on the number of terms such Delegate may serve. A vacancy in the office of Delegate shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Delegate. Any vacancy caused by reason other than removal shall be filled by the vote of the Members at a meeting of the Members called for such purpose. A Delegate may be removed, with or without cause, by the vote of a majority of a quorum of the Members at a meeting of the Members called for such purpose. If a Delegate is to be removed by vote of the Members, the Members shall elect a new Delegate at the same meeting. The term of office of any Delegate elected to fill a vacancy shall be the balance of the unexpired term of his predecessor. It shall be the duty of the Secretary of the Association to give written notice to the Secretary of the Lake Association of the election of a Delegate or of a vacancy in the office of Delegate within ten (10) days of such election or vacancy.

Section 2.08. Repair and Maintenance by the Association. Subject to Article X pertaining to destruction of Improvements and Article XI pertaining to eminent domain, the Association shall paint, maintain, repair and replace the Common Property and Improvements thereon or shall contract for such maintenance, repair and replacement to assure maintenance of the Common Property and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget on file with and approved by the DSE. However, the Association shall not be responsible for or obligated to perform those items of maintenance, repair or improvement of the Units or Restricted Common Areas, the maintenance of which is the responsibility of the Owner as provided in Section 2.10. Association maintenance, repairs and improvements shall include, without limitation, the right, without obligation, to perform all corrective janitorial, landscaping and repair work within any Residence, if the Owner fails to repair it; the repair and payment for all centrally metered utilities, water charges, and mechanical and electrical equipment in the Common Property; payment of all charges for all

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facilities which serve individual Units but which are subject to a common meter; payment of all Common Expenses and charges for water and utilities serving recreational amenities; the repair and maintenance of all walks, private driveways and other means of ingress and egress within the Property, and if determined by the Board to be economically feasible, an inspection and preventative program for the prevention and eradication of infestation by wood-destroying and other pests and organisms in the Property. All such costs of maintenance, repairs and replacements for the Property shall be paid for as Common Expenses out of the Maintenance Funds as provided in this Declaration. All work performed by the Association for and on behalf of an Owner which work is not the responsibility of the Association shall be charged to the Owner as a Special Assessment. It shall further be the affirmative duty of the Board of Directors to require strict compliance with all provisions of this Declaration and to cause the Property to be inspected by the Architectural Committee for any violation thereof. The cost of any maintenance, repairs or replacements by the Association arising out of, or caused by, the act of an Owner or such Owner's family, tenants, guests, invitees, or agents shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner.

Section 2.09. Unsegregated Real Property Taxes. To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if all of the Units in a Phase of Development are taxed under a blanket tax bill covering all of such Phase, each Owner shall pay his proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date, and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated equally among the Owners and their Condominiums in such Phase, based upon the total number of Units in such Phase. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner in such Phase a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his proportionate share. The Association shall add to the Annual Assessment levied against any delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any, in addition, include as part of the Annual Assessment an amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with

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the blanket tax bill for a Phase of Development which late charge results from the failure of the delinquent Owner(s) to make timely payment of his proportionate share of the taxes. Until the Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Project the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Declarant.

Section 2.10. Repair and Maintenance by Owners. Each Owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, all portions of his Unit, as well as the windows, doors, light fixtures actuated from switches controlled from, or separately metered to, such Owner's Unit, and the interior surfaces of the walls, ceilings, floors, doors and permanent fixtures, in a clean, sanitary and attractive condition. In accordance with the Condominium Plan and the original construction design of the improvements in the Project. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units shall be pierced or otherwise altered or repaired without the prior written approval of the plans for the alteration or repair by the Architectural Committee. It shall further be the duty of each Owner, at his sole expense, to keep free from debris and maintain in a reasonably good state of repair subject to the approval of the Architectural Committee, the Restricted Common Areas over which an exclusive easement has been reserved for the benefit of such Owner. However, no Owner shall be responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of his assigned Restricted Common Areas, so long as the painting, repair or replacement is not caused by the willful or negligent acts of the Owner or his family or guests. It shall further be the duty of each Owner to pay when due all charges for any utility service which is separately metered to his Unit.

Section 2.11. Use of Agent. The Board of Directors, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The term of such contract, or any contract with Declarant for the furnishing of services to the Association, shall not exceed one (1) year, renewable by agreement of the parties for successive one-year periods, and such contract shall be terminable by the Association, acting through the Board, at any time (a) for cause upon thirty (30) days' written notice thereof, and (b) without cause or the payment of a termination fee upon ninety (90) days' written notice.

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(c) any right of set-off, counterclaim, apportionment, protraction or contribution by reason of other insurance not carried by the Association;

(d) any invalidity, 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, if the Improvement is 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;

(f) notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Condominium; and

(g) any right to require any assignment of any Mortgage to the insurer.

ARTICLE X

DESTRUCTION OF IMPROVEMENTS

Section 10.01. Restoration of the Property. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Property, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article IX hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Architectural Committee have been approved in writing by seventy-five percent (75%) of the Owners and by the Beneficiaries of seventy-five percent (75%) of first Mortgages upon the Condominiums. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment shall be levied by the Board of Directors to provide the necessary funds for such

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reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Owners by the vote or written consent of not less than seventy-five percent (75%) of the Owners, together with the approval of the Beneficiaries of at least seventy-five percent (75%) of the first Mortgages on Condominiums in the Project, shall determine whether the Board shall levy a Reconstruction Assessment and proceed with such restoration and repair. If the Owners and their Mortgages, as provided above, determine that the cost of such restoration and repair would be substantial and that it would not be in their best interests to proceed with the same, the Owners may, at their discretion, proceed as provided in Section 10.02 below.

Section 10.02. Sale of Property and Right to Partition.
If the amount available from the proceeds of the insurance policies maintained by the Association is less than eighty-five percent (85%) of the cost of reconstruction, a certificate of the resolution authorizing such reconstruction may be recorded within six (6) months from the date of such destruction and, if such certificate is not recorded within said period, it shall be conclusively presumed that the Owners have determined not to rebuild said improvements. No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof, except that if a certificate of a resolution to rebuild or restore the Project has not been recorded as provided above, within six (6) months from the date of any partial or total destruction, or if restoration has not actually commenced within said period, and the vote or written consent to such a partition is obtained from the Owners of two-thirds (2/3rds) of the Condominiums in the Project, then conditions for partition as set forth in Subdivision (e) of Section 1354(b) of the California Civil Code shall be deemed to have been satisfied. In such event, the Association, acting through a majority of the Board as provided in Section 1355(b) of the California Civil Code, shall prepare, execute and record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners with the exception of the Administrator of Veterans Affairs, an officer of the United States of America, and such other documents and instruments as may be necessary for the Association to consummate the sale of the Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the

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ARTICLE XIV

ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS

Section 14.01. Consideration by Board of Directors. If (1) the Improvements to be located on the Common Property are not completed prior to the issuance of a Final Subdivision Public Report by the DRE for the sale of Condominiums in the Project, and (2) the Association is obliged under a bond or other arrangement ("Bond") required by the DRE to secure performance of the commitment of Declarant to complete such Improvements, the Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any such improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any improvement on the Common Property, the Board shall be directed to consider and vote on the aforesaid question (if a Notice of Completion has not been filed), within thirty (30) days after the expiration of the extension.

Section 14.02. Consideration by the Members. A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of the Association residing in Members other than Declarant. A vote at such meeting to take action to enforce the obligations under the Bond by Members representing a majority of the total voting power of the Association residing in Members other than Declarant shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by instituting and pursuing appropriate action in the name of the Association.

ARTICLE XV

GENERAL PROVISIONS

Section 15.01. Legal Proceedings. Failure to comply with any of the terms of the Restrictions by an Owner, his family, guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of

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any lien, or any combination thereof. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof. The Board, any Owner (not at the time in default hereunder), or Declarant (so long as Declarant is an Owner) shall be entitled to bring an action for damages against any defaulting Owner, and in addition may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive. Each Owner shall have a right of action against the Association for the failure by the Association to comply with the Restrictions.

Section 15.02. Violation of Restrictions: Without in any way limiting the generality of the foregoing, if the Board of Directors determines that there is a violation of any provision of this Declaration, or the Architectural Committee determines that an improvement which is the maintenance responsibility of an Owner is in need of installation, repair, restoration or painting, then the Board shall give written notice to the responsible Owner of the condition or violation complained of. Unless the Architectural Committee has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such period of time as may be determined reasonable by the Board after it has given said written notice, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Board, after Notice and Hearing, shall undertake to remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner and his Condominium whose Residence is the subject matter of the corrective work. Such cost shall be deemed to be a Special Assessment to such Owner and shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Declaration. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Unit, to comply with any provision of the Restrictions. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

Section 15.03. Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

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EXHIBIT B

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not to exceed five (5) years duration provided that the lessor
under any such agreement is not an entity in which Declarant
has a direct or indirect ownership interest of ten percent
(10%) or more.

Section 4.03. Special Powers and Duties. Without preju-
dice to such foregoing general powers and duties and such powers
and duties as are set forth in the Declaration, the Board of
Directors is vested with, and responsible for, the following
powers and duties:

(a) The power and duty to select, appoint, and
remove all officers, agents and employees of the Assoc-
iation; to prescribe such powers and duties for them
as may be consistent with law, the Articles of incor-
poration, the Declaration and these Bylaws; to fix
their compensation and to require from them security
for faithful service when deemed advisable by the
Board.

(b) The power and duty to conduct, manage and
control the affairs and business of the Association,
and to make and enforce such rules and regulations
therefor consistent with law, the Articles of incor-
poration, the Declaration and these Bylaws, as the
Board may deem necessary or advisable.

(c) The power but not the duty to change the
principal office for the transaction of the business
of the Association from one location to another within
the County of Orange, as provided in Article I, hereof,
to designate any place within said County for the hold-
ing of any annual or special meeting or meetings of
Members consistent with the provisions of Article III,
Section 1.02 hereof; and to adopt and use a corporate
seal and to alter the form of such seal from time to
time, as the Board, in its sole judgment, may deem
best, provided that such seal shall at all times comply
with the provisions of law.

(d) With the approval of Members representing at
least two-thirds (2/3rds) of the voting power of the
Association, the power but not the duty to borrow
money and to incur indebtedness for the purposes of
the Association, and to cause to be executed and
delivered therefor, in the Association's name, promis-
sory notes, bonds, debentures, deeds of trust, mort-
gages, pledges, hypothecations or other evidences of
debt and securities therefor.

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liability, malicious mischief, vandalism, errors and omissions, liquor liability and other insurance, insuring the Members, the Association, the Board of Directors and other interested parties. In accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board deems advisable (which may include without limitation, medical expenses of persons injured on the Common Property).

(b) The power and duty to contract for and pay for maintenance, legal, accounting, gardening, and common utilities services, and for materials and supplies and other Common Expenses relating to the Common Property, and relating to the Units only to the extent not separately set apart or charged, and to employ personnel necessary for the operation of the Property, including legal and accounting services, and to contract for and pay for improvements on the Common Property.

(1) The power but not the duty to delegate its powers according to law, and subject to the approval of the Members, to adopt these Bylaws.

(j) The power but not the duty to grant easements where necessary for utility and other purposes over the Common Property for the benefit of the Members of the Association.

(k) The power and duty to adopt such Rules and Regulations as the Board may deem necessary for the management of the Project, which Rules and Regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a meeting called for that purpose; or by the written consent of the Board in accordance with section 4.13, and (2) they are posted in a conspicuous place in the Common Property. Such Rules and Regulations may concern, without limitation, use of the Common Property; signs; collection and disposal of refuse; minimum standards of property maintenance consistent with the Declaration; and the procedures of the Architectural Committee; and any other matter within the jurisdiction of the Association as provided in the Declaration; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation and these Bylaws, and the Rules and Regulations may not be used to amend any of said documents.

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(l) The power and duty to keep, or cause to be kept, a complete record of all acts and corporate affairs of the Association and to present a statement thereof to the Members at the annual meeting of the Members and at any other time that such statement is requested by at least ten percent (10%) of the Members who are entitled to vote.

(m) The power but not the duty to appoint a Membership Committee composed of at least one (1) Director and at least one (1) Association Member at large. The Membership Committee shall be responsible for contacting all purchasers or Condominiums in the Project as soon as any transfer of title to a Condominium is discovered. The Membership Committee shall further attempt to establish initial contact with all Members who are delinquent in the payment of any assessments or other charges due the Association.

(n) The power but not the duty to sell property of the Association; provided, however, that the prior vote or written approval of the Members representing at least a majority of the voting power of the Association must be obtained to sell during any Fiscal Year any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

Section 4.04. Management Agent. The Board of Directors may engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board shall authorize. Such agreement, and any contract providing for services by Decedent, must not be for a term of greater than one (1) year and must provide for termination by either party for cause upon no more than thirty (30) days' written notice, and without cause nor payment of a termination fee, upon no more than ninety (90) days' prior written notice.

Section 4.05. Election and Term of Office.

(a) Directors shall be elected by secret written ballot of the Members. At the first annual meeting of the Members, new Directors shall be elected by the Members as provided in these Bylaws, and all positions on the Board of Directors shall be filled at that election. In the event that an annual meeting is not held, or the Board is not elected thereto, the Board may be elected at any special meeting of the Members.

EXHIBIT C

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MANAGEMENT AGREEMENT

THIS AGREEMENT made this 3rd day of October, 2021 by and between RIDGEMONT COMMUNITY ASSOCIATION, a California non-profit mutual benefit corporation, hereinafter referred to as " Association ", and ACCELL PROPERTY MANAGEMENT, INC. a California Corporation, hereinafter referred to as " Management Agent ".

WITNESSETH

In consideration of the mutual promises, covenants, and conditions herein contained, Association and Management Agent agree as follows:

ARTICLE I APPOINTMENT OF MANAGEMENT AGENT

- 1.1 The Association hereby appoints ACCELL PROPERTY MANAGEMENT, INC. as Management Agent and ACCELL PROPERTY MANAGEMENT, INC. hereby accepts appointment based on the terms and conditions enumerated in this agreement, as the Managing Agent of the Association. The property to be managed is located in the City of Mission Viejo, County of Orange, State of California, herein after referred to as the "Covered Property".
- 1.2 ACCELL PROPERTY MANAGEMENT, INC. shall be the agent acting on behalf of the Association as a disclosed principal with respect to the matters covered by this Agreement; provided, however, Management Agent shall have no authority to execute or enter into contracts on behalf of the Association unless specifically directed in writing to do so by an action of the Association Board.
- 1.3 Management Agent shall assist the Board in the management, operation and administration of the Association. Management Agent shall perform its duties under this Agreement in accordance with the Association's governing documents, including its declaration, by-laws, rules and regulations and other duly enacted policies and procedures (collectively referred to as the "Governing Documents"). Management Agent shall be available at reasonable times to confer with the Board and its representatives regarding the performance of the services set forth herein.
- 1.4 In consideration of Management Agent accepting appointment under the terms of this Agreement and for performing services as set forth herein, Association agrees to compensate Management Agent as follows:

Management Agent shall be paid the first day of each month a monthly fee of [REDACTED]. In addition the Association shall pay Management Agent additional compensation in accordance with Exhibit "A" attached hereto.

ARTICLE II

RESPONSIBILITIES OF MANAGEMENT AGENT

- 1. Administrative Services**
- 1.1 Organize meetings of owners including the preparation of notices, agendas and other necessary documents.**
- 1.2 Organize meetings of the Board including the preparation of notices, agendas and other necessary documents.**
- 1.3 Guide and assist members of the Board in the performance of their duties and obligations.**
- 1.4 Guide and assist the Board and its duly appointed committees in the development, implementation and enforcement of policies and procedures, rules and regulations, and architectural guidelines and standards.**
- 1.5 Assist in the administration of the provisions of the Declaration, Articles of Incorporation, By-laws, Rules and Regulations and policies of the Association ("Governing Documents").**
- 1.6 Upon request, provide sample material, advise and counsel to assist all duly appointed committees of the Board in the execution of their stated purpose.**
- 1.7 Keep all records of the affairs of the Association and the Board, including but not limited to, the Declaration, Articles of Incorporation, By-laws, Rules and Regulations, policies, Minutes of Meetings, copies of contracts, etc. (documents are to be provided to Management Agent by the Association) and maintain all such documents in a current status. All such records shall belong to the Association.**
- 1.8 Maintain registers of Owners, Officers and Directors and such other registers or schedules as may be required by the Governing Documents. The initial information for all of which is to be provided to Management Agent by the Association. Management agent has no obligation to verify the accuracy of information provided to Management Agent by the Association or prior management representatives of the Association.**
- 1.9 Upon request, deliver records, documents, correspondence, files, materials and supplies to the Covered Property. Management shall be entitled to charge a fee for such deliveries as specified in Exhibit "A" attached hereto.**
- 1.10 Attend to all necessary correspondence on behalf of the Board and Association.**
- 1.11 Assist in resolving individual Owner request as they pertain to the administration of the Association, its common elements, and Governing Documents.**
- 1.12 Assist the Board of Directors and the Association's legal representatives in matters related to legal actions in which the Association is involved as a party related to the business and management of the project including but not limited to researching documents, records and files; attending special meetings; preparing correspondence; telephone communications; testifying at trials or settlement conferences; and any other activity or function deemed necessary in connection with Association legal action. Management Agent is entitled to charge additional "Legal Action" fees for these services as specified in Exhibit "A" attached hereto. No "Legal Action" fees shall be**

charged unless such services were requested in writing by the Board or compelled by order of law or the courts.

- 1.13 In the event the Association undertakes reconstruction or major renovation projects of any portion of the Covered Property, Management Agent shall not be responsible in matters related to the business and management of these project(s), including but not limited to, construction management; researching documents, records and files; attending special meetings; preparing correspondence; telephone communications; and any other activity or function deemed necessary in connection with the reconstruction or renovation of the Covered Property. Management Agent is entitled to charge additional fees, as specified in Exhibit "A" attached hereto, should Management Agent assist the Association or provide services related to projects of this nature, if such services were requested in writing by the Board.
- 1.14 Management Agent shall be entitled to charge for service for other special projects and reports not herein included at the hourly rates shown in Exhibit A or at a fixed amount agreed upon in writing by the Association's Board of Directors.
2. **Fiscal and Accounting Services**
 - 2.1 Prepare a recommended annual operating budget. The budget shall be based on prior operating expenditures, estimated future expenses and other parameters as established by the Board. Capital Reserve requirements will be incorporated into the annual operating budget as provided by the Board of the Association or the Association's designated Reserve Budget Preparer. Management Agent shall not be responsible for any discrepancies between the budget and actual expenses, the budget being an estimate to be used as a guide. The budget shall be submitted to the Board for its consideration and adoption.
 - 2.2 Keep complete and separate records in accordance with generally accepted accounting standards and procedures, showing income and expenditures in connection with the operation of the Property.
 - 2.3 Furnish monthly interim financial reports which shall include a Balance Sheet, Statement of Income and Expense for the month and fiscal year to date, Operating Account Check Register, Accounts Receivable Report, bank statements and reconciliation's. These reports are unaudited by Management Agent.
 - 2.4 Management shall be responsible for reconciling one (1) checking account on a monthly basis. Reconciliation of additional checking accounts or loans entered into by Association will be charged at a fee per Exhibit "A" attached hereto.
 - 2.5 All Association reserve investment accounts shall be established in the Association's name, require two (2) Board member signatures for withdrawal of money in accordance with California Civil Code Title VI, Section 1365.5 (b), and kept in financial institutions as selected by the Board.
 - 2.6 Association shall maintain one (1) operating checking account in the name of the Association for the deposit of money collected for the Association in a banking institution insured by the Federal Deposit Insurance Corporation (F.D.I.C.) of Management Agents choice.

- 2.7 Management Agent shall not have the authority to draw on the operating checking account except as may be specifically authorized by the Board in writing. Management shall not have the authority to draw on the reserve account.
- 2.8 Send billing statements to homeowners as directed by the Board.
- 2.9 Maintain accounts receivable records.
- 2.10 Management Agent shall have the authority to utilize outside sources such as attorneys and collection agencies in the pursuit of delinquent accounts based upon the policies and procedures established by the Association Board of Directors.
- 2.11 Any and all costs, expenses and reasonable attorney fees incurred by Management Agent in the collection of delinquent accounts shall be paid by Association. The Association further agrees to indemnify Management Agent, its employees, agents, officers and directors against all claims, costs, suits ("Claims") arising from the collection of delinquent accounts and enforcement of Association's collection policy, except Claims resulting from or arising out of Management Agent's gross negligence or willful misconduct. With the exception of acts of intentional misconduct or gross negligence Management Agent shall not be responsible for any additional charges or costs incurred by the Association in the collection of delinquent accounts resulting from or due to any act, error, omission, statement or representation by Management Agent, its employees, agents, officers or directors in the performance of Management Agents duties. Management Agent agrees to indemnify Association, its directors, officers and agents against all Claims arising out of or resulting from Management Agent's gross negligence or willful misconduct related to the collection of delinquent accounts and enforcement of Association's collection policy. Management Agent shall comply with the federal and state Fair Debt Collection Practices Act.
- 2.12 Assist in the performance of the annual financial review or audit and income tax preparation in consonance with auditors appointed by the Board. Management Agent will absorb two (2) hours of bookkeeper's time to assist auditor in preparation of the annual financial review or audit. Should the Association authorize in writing additional audits, financial reviews, reconciliations or adjustments, Management Agent is entitled to charge for its time and other costs incurred associated with such auditing and bookkeeping activities in accordance with Exhibit A.
- 2.13 Distribute audited annual financial reports, proforma operating budget and statement of collection policy as directed by the Board.

3. Administration of Facilities, Goods and Services

- 3.1 Receive and process Association members requests concerning the Association's covered property and operations.
- 3.2 Provide two (2) to three (3) walk throughs per month of the covered property. Walk throughs shall involve review of Association member's compliance with Association's Architectural Standards and Rules & Regulations; review of common area landscaping to ascertain whether proper maintenance and care has been provided; review of common area buildings and hardscapes to identify maintenance needs; and review of recreational facilities to ascertain proper maintenance and care has been provided.

Walk throughs will be made Monday through Friday during regular business hours of Management Agent. Management Agent shall conduct walk throughs to the best of their ability and consistent with industry standards. Management Agent makes no promises, guarantees or warranties with regards to the outcome of walk throughs and shall only be bound to act on conditions specifically noted during the walk through. Additional walk throughs, in excess of the three (3) walk throughs provided for in Section 3.2 above, requested in writing by the Board, will be at an additional charge to the Association.

- 3.3 Pursuant to 3.2 above and upon request, Management Agent will attend one (1) site walk through per month, during normal business hours, with representatives of Board of Director's or Committee of the Association, not to exceed one (1) hour.
- 3.4 Assist and counsel the Board of Directors in determining the level of goods and services required by the Association.
- 3.5 Upon request by the Board of Director's, furnish sample contracts and specifications for routine goods and services required by the Association. Upon written request of the Board, Management Agent shall refer the Association, at the Association's expense, to experts, specialists and/or professionals in any field, trade or profession in which Management Agent does not have adequate expertise to meet the Association's needs in the preparation of contracts and specifications.
- 3.6 Management Agent shall administer the contracts of persons or companies performing routine services for the Association.
- 3.7 For any one item of repair or replacement, the expenses incurred shall not exceed the sum of \$700.00, unless specifically authorized in writing by two members of the Board of Directors; excepting, however, that emergency repairs involving manifest danger to life and property, or immediately necessary for the preservation and safety of the project, or for the safety of the occupants, or required to avoid the suspension of any necessary service to the project may be made by the Management Agent, irrespective of the cost limitation imposed by this paragraph.
- 3.8 Association understands that during the normal course of operations emergency situations will arise in which Management Agent must make field decisions based on limited information on hand. Association agrees to hold Management Agent harmless for any decision made in good faith and for the intended benefit of the Association in which Management Agent must act in cases of emergency to protect, preserve or repair interests and/or elements of the Association and its property.
- 3.9 Provide 24 hour on call services for the purpose of handling emergency requests involving manifest danger to life and property, or immediately necessary for the preservation and safety of the Covered Property, or for the safety of the members or required to avoid the suspension of any necessary service to the Association.
4. Association Records Retained
 - 4.1 The Association records shall be kept at Management Agent's offices. In accordance with California Civil Code §1363(f) and California Corporations Code §8330, or any subsequent amendment thereto, such records shall be open for inspection during Management Agent's normal business hours by appointment.

- 4.2 Management Agent shall be entitled to charge and receive administrative and copying costs from anyone requesting copies of documents, as approved by the Board, before making such copies. Management Agent shall also be entitled to reasonable prior notice of a request to inspect or copy Association records.
- 4.3 Management Agent shall maintain a current unit owner's list in accordance with the information supplied Management Agent.
- 4.4 Management Agent shall use reasonable efforts in keeping unit owner's list current. Management Agent shall not be obligated to discover transfers of ownership that are not reported directly to Management Agent, and there is no obligation of Management Agent to search official county records for such transfers, unless specifically requested to do so in writing by the Board of Directors at rates previously set forth.
- 4.5 Management Agent shall record and maintain changes of ownership upon notification from owners, with supporting written documentation.
- 4.6 Management Agent shall further maintain documents and files relating to the Association such as, but not limited to, written unit owner correspondence, contracts, filings with public agencies, insurance policies, minutes of Board and membership meetings and all other records and documents pertaining to the administration of the Association.
- 4.7 Records and correspondence regarding the Association are, and will remain the sole property of the Association. Upon termination of the Agreement, Management Agent agrees to return such records and correspondence to the Association to a person designated by the Board of Directors of the Association. Such records shall be picked up at Management Agent's office.
- 4.8 Management Agent agrees to maintain storage of Association books and records for the contract period. Association books and records dated prior to the commencement date of this agreement will be maintained in storage subject to rates set forth in Exhibit "A" attached.
- 5. Telephone Communications
 - 5.1 Management Agent shall receive telephone calls concerning Association business during Management Agent's normal business hours. Emergency calls will be handled in accordance with section 3.9 above.
 - 5.2 Management Agent has the right to terminate telephone calls from any caller using abusive or profane language. Furthermore, Management Agent has the right to refuse calls from callers who repeat calls using abusive and profane language. Such callers will be required to make all correspondence through Management Agent in writing.

Abusive language is any language which causes humiliation and intimidation; or inflicts ridicule, coercion, threats, mental abuse or other language of a punitive nature; or in which prejudicial or profane language is used.

**ARTICLE III
INSURANCE AND INDEMNIFICATION**

1. Management Agent's Insurance

- 1.1 Management Agent shall, throughout the terms of this Agreement and at Management Agent's expense, as reasonably available, maintain a fidelity bond with minimum limits of \$500,000. Management Agent makes no promises or warranties that said Fidelity Bond policy covers or protects the Association, its officers, board members, committee members, agents or employees. Management shall provide Association with a copy of such fidelity bond, and if feasible, cause Association to be named as an individual insured on its fidelity bond and general liability insurance policy. Association shall be provided with thirty (30) days written notice of any cancellation, termination or changes in said policies.
- 1.2 Management Agent shall also, throughout the terms of this Agreement, and at Management Agent's expense, maintain a policy of Worker's Compensation covering Management Agent's employees.
- 1.3 Management Agent shall also, throughout the term of this Agreement, and at Management Agent's expense, maintain a Liability Insurance policy for Management Agent's employees with combined single limits of one million dollars (\$1,000,000) property damage or injury and death, as available.

2. Association's Insurance

- 2.1 The Association shall throughout the term of this Agreement, maintain a policy of comprehensive general liability insurance and directors and officers coverage.
- 2.2 Association expressly agrees that the Comprehensive General Liability policy and Directors and Officers policy shall name Management Agent as an additional insured immediately after the effective date of this Agreement. Association further agrees to furnish Management Agent with certified copies of the entire policy or policies as well as certificates of insurance showing Management Agent as an additional insured. Association agrees to provide Management Agent with (30) days written notice of any cancellation, termination, or changes in said policies or endorsements.
- 2.3 If available, Association will procure at its own expense an endorsement to its Fidelity Bond policy naming Arcell Property Management, as an insured under its employee dishonesty section.

3. Indemnification

- 3.1 The Association hereby agrees to indemnify, defend and hold Management Agent and its employees, agents, officers and directors harmless against any and all loss, liability, claims, costs, suits, and damages, including reasonable attorney's fees ("Claims"), arising out of the performance of this Agreement or in connection with the management and operation of said Association, including claims, damages and liability for injuries suffered, or death or property damage incurred relating to the Covered Property, excluding Claims arising out of or resulting from Management Agent's gross negligence or willful misconduct. The Agreement to indemnify Management Agent also relates to any acts, errors or omissions, statements or representations made by Management Agent in the performance and/or non-performance of Management Agent's

duties, and relating to all contractual and non-contractual liabilities that may be alleged or imposed against Management Agent. The provisions of this paragraph shall survive the termination of this Agreement.

- 3.2 Management Agent agrees to indemnify the Association, its directors, officers and agents from any and all Claims, as defined in 3.1 above, in connection with or arising out of Management Agent's acts or omissions of intentional misconduct or gross negligence in the performance or nonperformance of its duties under this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.

Management Agent shall assist as requested by the Association's attorney in the defense of legal actions brought against the Association occurring during the period of time Management Agent was employed as agent. Management Agent shall be entitled to their hourly rate for such assistance.

ARTICLE IV MANAGEMENT / ASSOCIATION PROTECTION

1. Employees

- 1.1 Management Agent spends a great deal of time and expense to hire and train employees for the operation of this and other associations. Association derives the benefits of Management Agents experience in operating this association and of such hiring and training procedures. Association realizes the time and expense Management Agent incurs to obtain outstanding personnel. Association therefore agrees not to offer or accept for hire any of Management Agents employees either during their employment or for a period of two hundred and eighty days (280) after the conclusion of their employment. Association and Management Agent further agree not to cause to be made any slanderous remarks or statements and refrain from publishing any libelous materials regarding the other in their personal or professional capacity. Association cannot control, and therefore cannot be held responsible or liable for slanderous remarks or statements or publishing of libelous materials by individual members of the Association

2. Trade Secrets and Proprietary Information

- 2.1 During the course of this Agreement, Association will be dealing with trade secrets of Management Agent, including information, inventions, writings and processes, all of a confidential nature. These trade secrets provide a competitive advantage to Management Agent and are the property of Management Agent. In particular, Association may have access to and be dealing with trade secrets such as confidential customer lists, procedures for servicing Management Agent's clients, technical writings of Management Agent and documents relating to the servicing of Management Agent's clients.
- 2.2 Association promises to hold in the strictest confidence and not divulge to others, nor to use to the detriment of Management Agent, anytime during this Agreement or thereafter, so long as it shall retain a degree of confidentiality giving value to its protection from competitors, any trade secrets or confidential information or material attained during the course of this agreement.

2.3 All Copyright material, confidential writings, professional trade publications and writings created by Management Agent that might be given to Association in the course of this Agreement, are the exclusive property of Management Agent and shall remain in Management Agent's possession on Management Agent's premises.

3. Enforcement

3.1 In the event Association violates the terms of this Article, Management Agent may bring legal action requesting both legal and equitable relief. All parties further recognizes that in the event legal action is necessary to enforce the terms of this Article the prevailing party shall be entitled to reasonable attorney's fees and all costs of suit incurred therewith.

ARTICLE V
SUBSTITUTION OF MANAGEMENT AGENT

1. Records Turnover

1.1 Upon termination by either party per the notice requirements under Article VI, Term of this Agreement, a date and time shall be set for a meeting to take place in Management Agent's office for the purpose of turning over to the Association records, funds and deposit accounts and to execute any agreements and releases relating to the conclusion of contractual obligations. Association will also present Management Agent with a forwarding address and telephone number for Association business.

ARTICLE VI
TERM

1. Term

1.1 The term of this Agreement shall be for a period of one (1) year beginning on the first day of April, 2020 and ending on the 30 day of March, 2021, and shall automatically renew at the end of the term on a month to month basis thereafter unless either party has given written notice of intent to terminate or re-negotiate said Agreement

1.2 Association understands and agrees that Management Agent shall be entitled to its management fees up to and including the termination date, pursuant to Article VI, Section 2.1, whether or not the Association actually allows Management Agent to continue its services, then such duties shall be performed through 5:00 p.m. on the termination date.

1.3 It is further understood by Association that the term of Agreement and compensation to Management Agent may be modified by completion of a new Agreement or related Addendum(s). The general conditions will continue to remain in effect and be incorporated by reference, as though set in full, in any revised written Addendum.

1.4 If any term, provision, covenant or condition of this Agreement, Exhibits or Addendum(s) are found by any court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

1.5 If any legal proceeding is necessary to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and legal costs in addition to any other relief such party may be entitled to.

2. Termination

2.1 This Agreement may be terminated by either party upon thirty (30) days written notice. This notice shall be sent certified or registered mail to Management Agent's principal place of business or, as to Association, to current Board President's home of address.

2.2 In the event a petition of bankruptcy is filed by or against either Management Agent or Association, or in the event that either shall make an assignment for the benefit of creditors or take advantage of any insolvency act, either party hereto may terminate this Agreement with written notice to the other.

ARTICLE VII
GENERAL

1. Notice

1.1 Other than as stated in section 2.1 of Article VI, any notice by either party to the other shall be in writing and shall be given, and be deemed given if either delivered personally or mailed in a registered or certified postage paid envelope addressed to Management Agent's principal place of business or, as to Association, to the current Board President's home address.

2. Exhibits

2.1 The attached Exhibits A & B are hereby made a part of this contract.

3. Extent of Agreement

3.1 This document and any properly executed Addendum(s), signed by both parties and attached hereto, shall represent the entire integrated agreement between Management Agent and Association and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by two (2) principal officers each of Management Agent and the Association with the exception that Management Agent may amend all or portions of Exhibit "A" with thirty (30) day prior written notice to the Association delivered personally or by registered or certified mail.

4. Acknowledgment

4.1 IN WITNESS WHEREOF the parties have executed this Agreement this 3RD day of October, 2021.

ASSOCIATION:

MANAGEMENT AGENT:

By: [Signature]
Title: PRESIDENT
By: [Signature]
Title: VP

By: [Signature]
Title: [Signature]
By: [Signature]
Title: S