

RECORDING REQUESTED BY, AND WHEN  
RECORDED MAIL TO:

Creekside Oaks Homes Association c/o  
Community Management Services, Inc.  
1935 Dry Creek Road, Suite 203  
Campbell, CA 95008

APN: \_\_\_\_\_

#### NOTICE OF COVENANT

#### MAINTENANCE, HOLD HARMLESS, AND INDEMNITY AGREEMENT

This Notice of Covenant, Maintenance, Hold Harmless and Indemnity Agreement (hereinafter "Agreement" is entered into between the CREEKSIDE OAKS HOMES ASSOCIATION (hereinafter "Association") and \_\_\_\_\_, ( hereinafter "Owner"). The Association and Owner shall be referred to collectively as "Parties".

#### RECITALS

A. The Association is a California nonprofit corporation established as a common interest development to manage the planned development known as CREEKSIDE OAKS (hereinafter "Development")

B. Owner is the record owner of the Property located within the Development managed by the Association, commonly known as \_\_\_\_\_, Los Altos, Ca. 94022. The legal description of the Property is attached hereto and incorporated herein as **Exhibit 1**.

C. The Property is located within the Development. The Association, under its Second Restated Declaration of Covenants, Conditions, and Restrictions (hereinafter "CC&Rs") and Creekside Oaks Homes Association Rules and Regulations (hereinafter both of which are referred to herein as "Governing Documents", is responsible for managing and maintaining the

Common Area of the Development and has limited and specific management and maintenance duties related to the Lots and Residences as set forth in the CC&Rs. The CC&Rs were recorded on May 4, 2007, Document No. 19413798.

D. Article VIII of the CC&Rs requires the Association to review and approve alterations or improvements that may impact the common area(s) within the Development.

E. Owner has requested architectural approval of the following improvements:  
\_\_\_\_\_ as depicted in **Exhibit 2**, which is attached hereto and incorporated herein by this reference. These improvements are collectively referred to as the "Improvement".

F. Article VI of the CC&R's require the Association to maintain the roof and roof-related components that may be affected by the Improvement to the Property including sheathing, gutters, downspouts, and skylights, vents, chimney caps, spark arrestors, and the portions of the weatherproof envelope (which includes foam roofing), atrium drains and drywells, except to the extent that such items have been modified by the Owner.

G. As part of the condition for approving the Improvement, Owner agreed to install and maintain the Improvement per the terms and conditions of this Agreement. Owner further agreed to reimburse the Association for the cost to draft and record this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby enter into this Agreement which shall run with the land and shall bind Owner, the Property, and each of the successors and assigns having or acquiring any right, title, or interest in the Property, or any part thereof, and shall inure to the benefit of the Parties, their respective successors and/or assigns and their respective real property. This Agreement is imposed on the interest of the Property and every part thereof as an equitable servitude in favor the Association and its members.

#### TERMS AND CONDTIONS

1. **Recitals.** The recitals are incorporated by this reference and made a part hereof.

2. **Improvement.**

a. The Association has approved the Owner's application for the HVAC system on the roof as described In Exhibit 2, which is attached hereto and incorporated herein by this reference, subject to the following conditions:

i. All of the Improvement must be installed by a licensed contractor;

ii. The contractor must carry general liability insurance issued by an insurer reasonably acceptable to the Association with coverage limits of at least \$1,000,000 per occurrence \$2,000,000 aggregate; auto liability insurance \$300,000; the Association and its agent, Community Management Services, Inc. ("CMS"), shall be additional insureds under the policies at no cost to the Association or to CMS, and Owner must provide the Association with proof of this insurance before commencement of the work on the Improvement;

iii. Owner's contractor, before commencement of the work, must provide the Association with written proof of workers' compensation insurance as required by law; and,

iv. Owner must provide a copy of the building permit and City Business License of the contractor(s) to the Association before commencement of the work.

b. The Improvement was installed by licensed and insured professionals and contractors. Owner has provided the Association with the names of all professionals and contractors hired to perform the work on the Improvement.

c. Owner shall submit for and obtain written approval from the Association for any variations, additions, or changes to the plans for the Improvement originally submitted and approved as set forth in Paragraph 3 (a). Any changes not approved shall be a material breach of this Agreement and the Governing Documents. Any variations, additions, or changes to the Improvement that have been approved shall be subject to this Agreement and the Governing Documents.

**3. Maintenance, Repair, and Replacement Duties.** Owner shall be responsible for all of the Association's maintenance, repair, and replacement obligations of the roof and roof components where the Improvement has been installed, including the underlayment, roof covering (including foam roofing), skylights (if modified) and any adjacent parapet or flashings. The location thereof is identified on Exhibit 2. Owner is also responsible to maintain, repair, and replace any other areas that could be affected by the Improvement, except that the Association shall be responsible for the maintenance, repair, and replacement of all other sections of the roof and roof component. If the Owner fails to maintain the roof areas impacted by the Improvement within 30 days after written notice to Owner by the Association, then if Owner has failed to commence repairs, the Association may perform the Owners' assumed maintenance, repair, and replacement responsibilities related to the roof, and other areas affected by the Improvement and may charge Owner for such work and Owner agrees to reimburse the Association for the cost thereof.

#### **4. Improvement Ownership and Maintenance.**

a. The Improvement shall be owned by and remain the property of the Owner of record of the Property. Any Owner of record of the Property shall be responsible for the installation, maintenance, repair, replacement and removal of the Improvement, and all related costs and expenses during Owner's period of record ownership.

b. As of the date of its installation the Improvement must meet all health and safety standards and requirements imposed by State and local permitting authorities, consistent with Section 65850.5 of the California Government Code and any successor statute and other applicable law. As of the date of the installation of the Improvement, it must meet all safety and performance standards of the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories, such as Underwriters Laboratories. Where applicable the system but comply with the rules of the local public utility and, if applicable the Public Utilities Commission, regarding safety and reliability as of the date of its installation.

5. **Continuing Obligations with Governing Documents.** The Improvement, its progress and completion, shall be a part of the Property and all requirements, covenants, and restrictions within the Associations Governing Documents as adopted or amended shall be in effect and shall apply to the Improvement and the Property including but not limited to the Owners' duties to pay assessments, maintain and repair the Property and the Improvement, insurance requirements, and Owners' and Association's respective easement rights.

6. **Removal of the Improvement.** If the Improvement is permanently removed from the Property, Owner will restore the roof and all other building structures to their original condition subject to architectural approval required by the Governing Documents. Once restoration has been completed following permanent removal of the Improvement and the common area has been restored to the satisfaction of the Association, the obligations of this Agreement will no longer be required, and both the Association and the Owner shall execute a termination agreement which may be recorded in the Office of the Recorder of Santa Clara County by the Owner. Owner shall pay for the reasonable cost of creating the termination agreement and recording fees.

7. **Mechanic's Liens.** Association and all its properties shall be free of mechanics liens related to the Improvement. If such a lien against Association or its properties it shall constitute a material default by Owner. Owner shall take immediate action to cure any such lien. The Association may take action to resolve any lien related to the Improvement and Owners shall be liable for all damages, reasonable attorney's fees, and costs incurred by the Association related to such action.

8. **Release.** Owners, successors, heirs, and assigns to the Lot, including representatives, agents, partners, contractors, subcontractors, employees, attorneys, and

insurers, agree to fully release, waive, and discharge the Association, its members, directors, officers, representatives, administrators, agents, partners, employees, attorneys, insurers, successors and assigns, FROM ANY AND ALL PAST, PRESENT OR FUTURE CLAIMS, LOSSES, DAMAGES, ACTION AND CAUSES OF ACTION, OF WHATEVER KIND OR NATURE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSPECTED, INCLUDING, BUT NOT LIMITED TO CLAIMS BASED ON THE ACTIVE OR PASSIVE NEGLIGENCE OF THE ASSOCIATION, LOSS OR DAMAGE TO REAL OR PERSONAL PROPERTY, AND/OR WRONGFUL DEATH, based on or relating to this Agreement, the Association's approval of the Improvement, the Improvement, changes to the Improvement, Owners' maintenance requirements and duties, and the Property and the Improvement.

9. **Indemnity.** Owners shall indemnify, defend, and hold harmless the Association, its directors, officers, representatives, administrators, agents, partners, employees, attorneys, insurers, successors and assigns, FROM ANY AND ALL CLAIMS, DAMAGES, ACTIONS, CAUSES OF ACTION, LIABILITIES, LOSSES, COSTS, ATTORNEYS' FEES AND ANY OTHER EXPENSES, based on or relating to this Association's approval of the Improvement, this Agreement, Owners' maintenance requirements and duties, the Improvement, and the Property ("Released Claims"), including payment of all costs, associated with or for any claim or damage to Association's property, maintenance areas, common area, other Lots, or other such damage, including property damage or personal injury, related to or arising out of the Released Claims.

10. **Attorney's Fees.** In the event of any legal action or arbitration arising out of or in connection with this Agreement, the prevailing party shall be entitled, in addition to any other relief, to reasonable attorney's fees, expert witness fees, and costs.

11. **Legal Advice.** The Association has provided no legal advice to Owner concerning this Agreement and Owner has obtained their own legal counsel and contracts with full acknowledge and understanding of its terms, provisions, and effect.

12. **Notice.** Any notice required or permitted under this Agreement shall be in writing given by certified mail, return receipt requested, personally, or by a nationally recognized overnight courier, at the addresses provided above. The Parties may update the above listed contacts for notice by providing the other Party written notice under the terms herein of this paragraph.

13. **Non-Severability.** Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall not terminate the entire Agreement or any other part unless all Parties agree to termination.

14. **Entire Agreement.** This Agreement is the entire agreement between the parties and may be altered only by an agreement in writing, executed by the Parties hereto. This

Agreement is not intended to, and does not, modify any obligations of the party under the Association's governing documents except as explicitly set forth herein. Specifically, Owner acknowledges that there is no claim of offset for assessments imposed by the Association based on Owner's maintenance (as required by Paragraph (3) above) of the Improvement.

15. **Venue.** This Agreement shall be governed under the laws of the State of California and venue shall be Santa Clara County Superior Court.

(signatures follow below)

DRAFT  
SAMPLE ONLY

**Creekside Oaks Homes Association :**

By:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name and Title: \_\_\_\_\_

**Owner(s)**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name and Title: \_\_\_\_\_

**Notary Attestations to Follow**

**EXHIBIT 1**

**LEGAL DESCRIPTION**

The land described herein is situated in the State of California, County of Santa Clara, described as follows:

DRAFT  
SAMPLE ONLY



**EXHIBIT 2**

**DESCRIPTION OF MODIFICATIONS/IMPROVEMENT**

DRAFT  
SAMPLE ONLY

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)