

CONSTRUCTION KEY NOTES

- 1

4" ASPHALTIC CONCRETE (AC); COMPACT TO 92% OR RICE DENSITY AASHTO T-209  
2" CRUSHED AGGREGATE BASE 3/4"-0 (LEVELING COURSE); COMPACT TO 95% OF MODIFIED PROCTOR AASHTO T-180  
10" CRUSHED AGGREGATE BASE 1-1/2"-0; COMPACT TO 95% OF MODIFIED PROCTOR AASHTO T-180  
12" SUBGRADE; COMPACT TO 95% OF STANDARD PROCTOR AASHTO T-99 OR EQUIVALENT  
LAYER OF NONWOVEN GEOTEXTILE MATERIAL
- 2

2" ASPHALTIC CONCRETE (AC); COMPACT TO 92% OR RICE DENSITY AASHTO T-209  
6" CRUSHED AGGREGATE BASE 1-1/2"-0; COMPACT TO 95% OF MODIFIED PROCTOR AASHTO T-180  
12" SUBGRADE; COMPACT TO 95% OF STANDARD PROCTOR AASHTO T-99 OR EQUIVALENT
- 3

3" ASPHALTIC CONCRETE (AC); COMPACT TO 92% OR RICE DENSITY AASHTO T-209  
2" CRUSHED AGGREGATE BASE 3/4"-0 (LEVELING COURSE); COMPACT TO 95% OF MODIFIED PROCTOR AASHTO T-180  
6" CRUSHED AGGREGATE BASE 1-1/2"-0; COMPACT TO 95% OF MODIFIED PROCTOR AASHTO T-180  
12" SUBGRADE; COMPACT TO 95% OF STANDARD PROCTOR AASHTO T-99 OR EQUIVALENT
- 4

STANDARD CURB, SEE CITY OF FLORENCE STANDARD DRAWING F-203 ON SHEET C901.
- 5

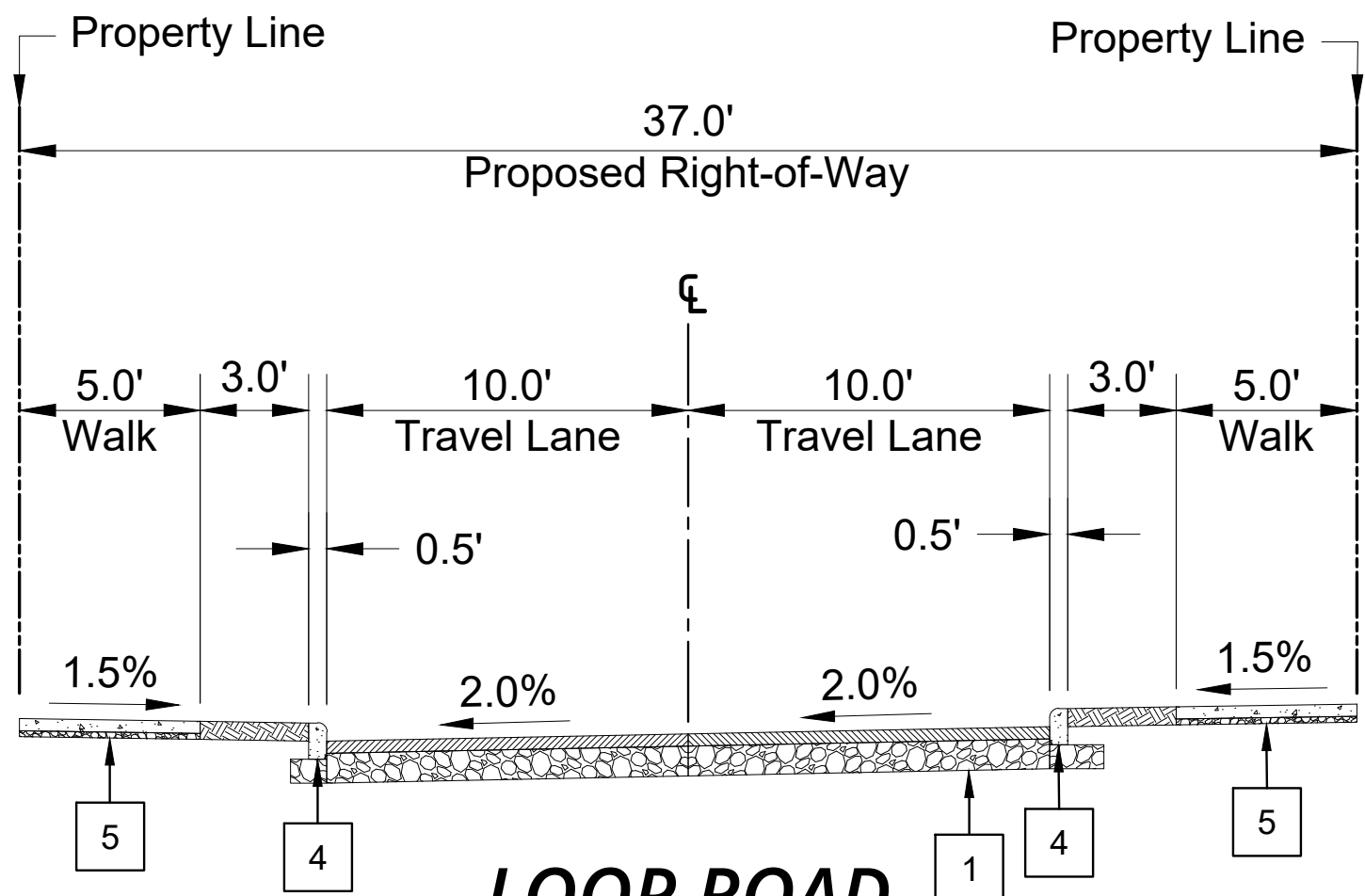
CONCRETE WALK, SEE CITY OF FLORENCE STANDARD DRAWING F-205 ON SHEET C901.
- 6

VEGETATED FILTER STRIP WITH 18" DEEP GROWING MEDIUM AND 18"W x 18"D WASHED DRAIN ROCK GRAVEL TRENCH.

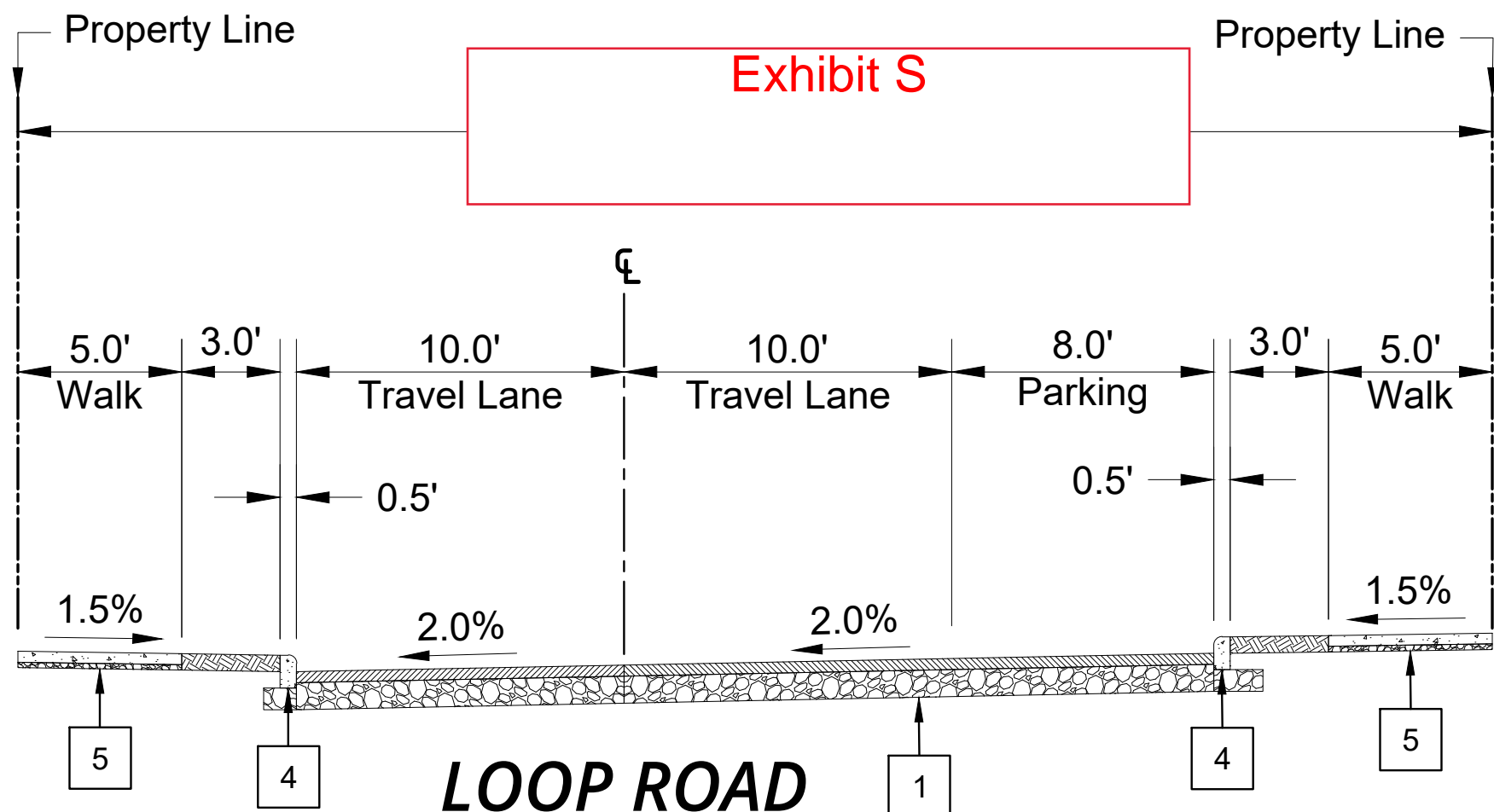
SUBGRADE/ AGGREGATE SEPARATION

WOVEN OR NONWOVEN FABRIC CONFORMING TO THE FOLLOWING PHYSICAL PROPERTIES:

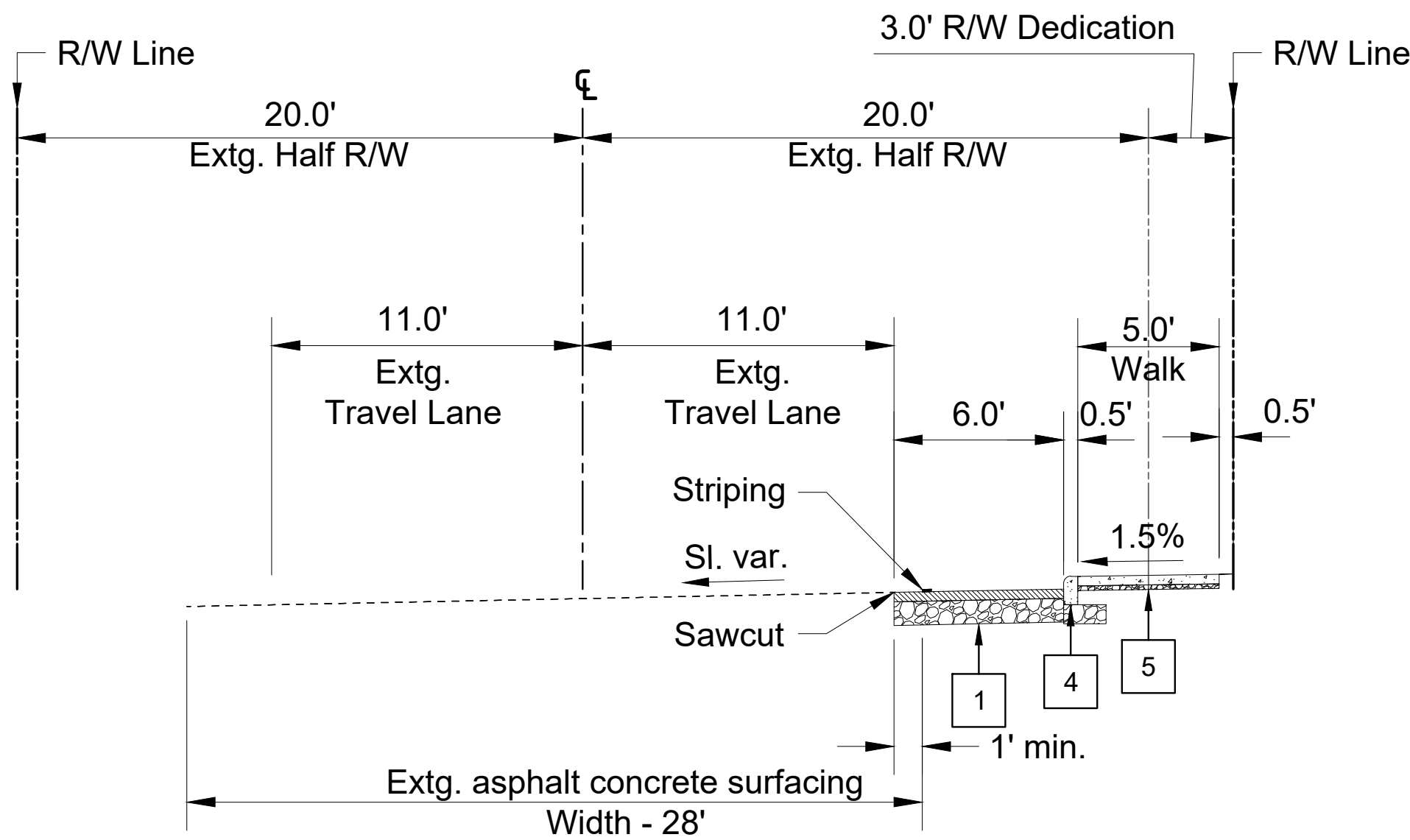
MINIMUM GRAB TENSILE STRENGTH	ASTM METHOD D-4632	180 lb
MINIMUM PUNCTURE STRENGTH (CBR)	ASTM METHOD D-6241	371 lb
ELONGATION	ASTM METHOD D-4632	15%
MAXIMUM APPARENT OPENING SIZE	ASTM METHOD 4751	No. 40
MINIMUM PERMITTIVITY	ASTM METHOD D-4491	0.05 s <sup>-1</sup>



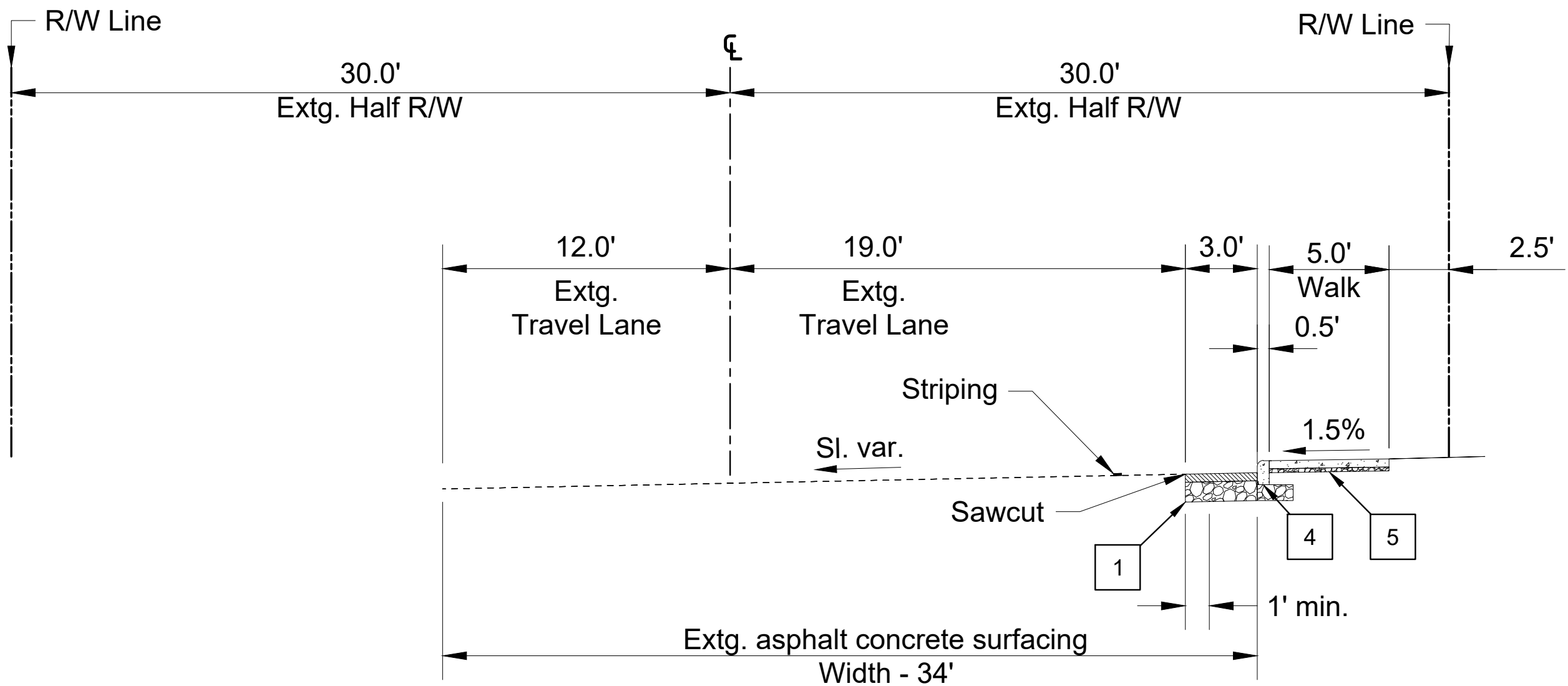
LOOP ROAD  
(No Parking)  
(Crosswalk)



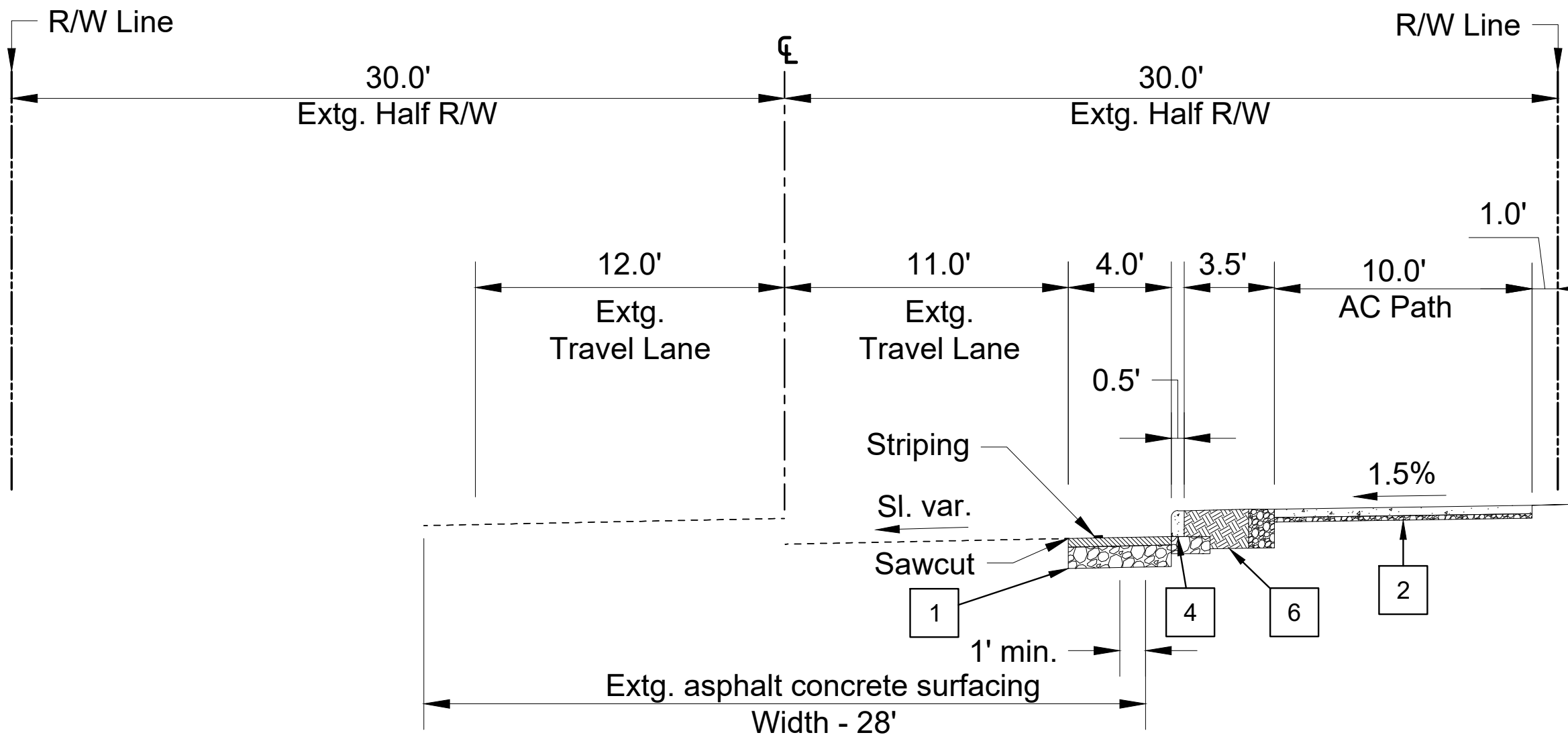
LOOP ROAD  
(Parking One Side)



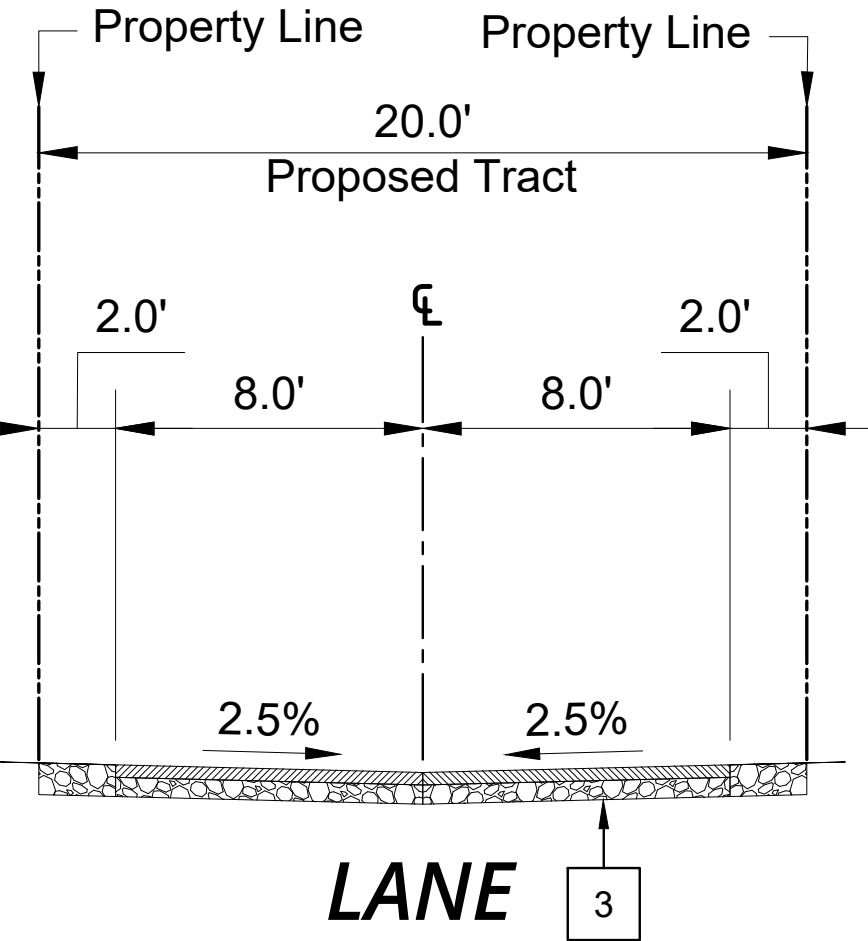
SIANO LOOP  
(Bike Lane)



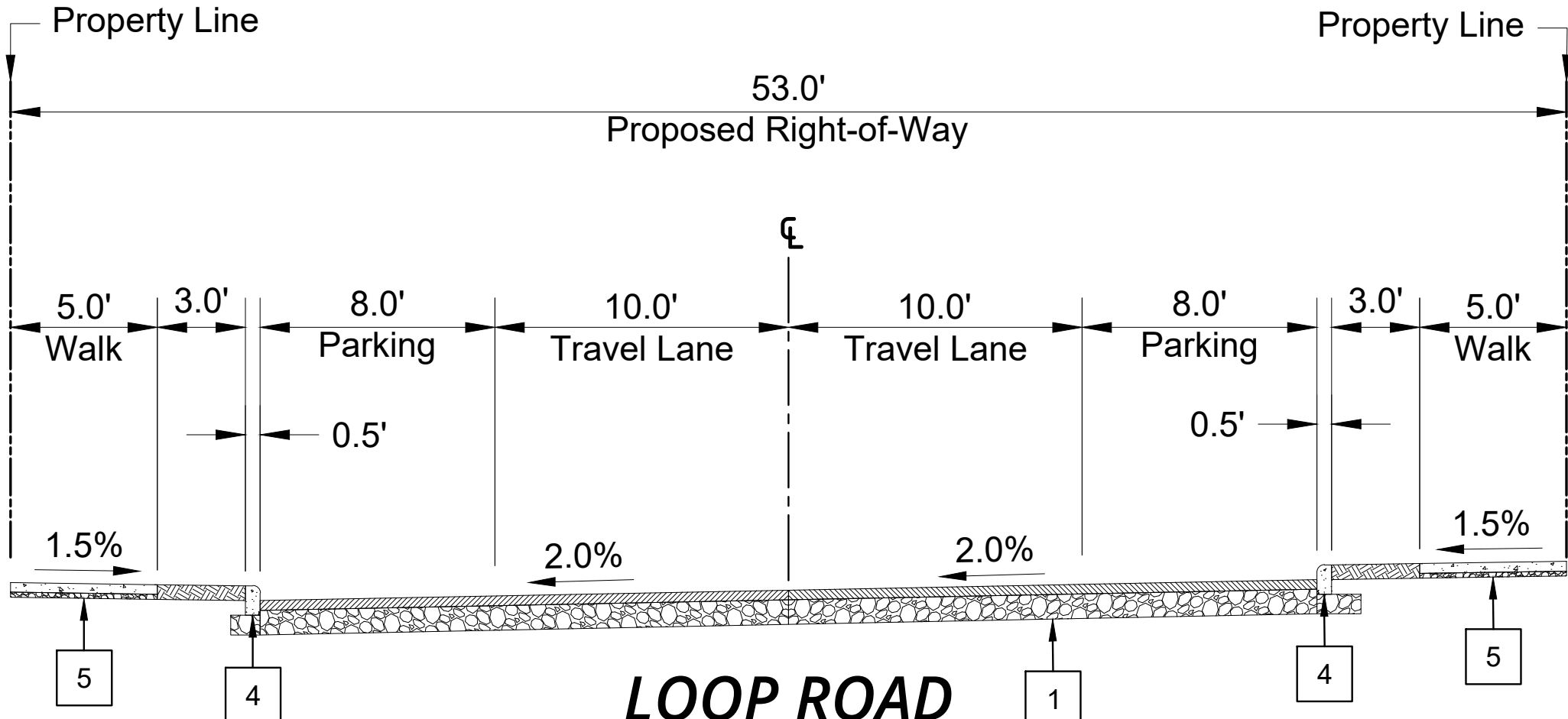
35TH STREET



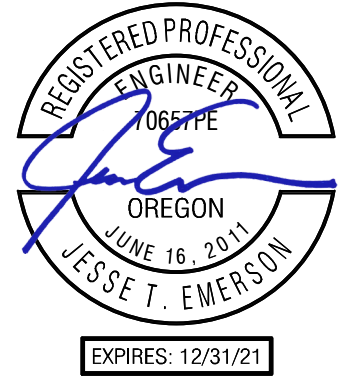
RHODODENDRON DRIVE



LANE



LOOP ROAD  
(Parking Both Sides)



PUBLISH DATE  
2021-09-10  
ISSUED FOR  
PERMIT SET



TYPICAL SECTIONS  
**RHODODENDRON ARBOR**  
**PLANNED UNIT DEVELOPMENT**  
APIC FLORENCE HOLDINGS, LLC  
FLORENCE, OR



3J CONSULTING

PROJECT INFORMATION  
PROJECT # | 19555  
LAND USE # | PC 20 07 PUD 01 & PC 20 08 SUB 01  
TAX LOT(S) | 700, 1900, 3800  
DESIGNED BY | JTE, TEG, ZMS, JKG  
CHECKED BY | AJM

SHEET NUMBER

C210



P:19555-FLORENCE MASTER PLAN/CADD/01 CORE/CD/19555-COMPOSITE UTILITY DWG



Exhibit T

ILITIES LEGEND

- FO EXISTING FIBER OPTICS LINE
- OHP EXISTING OVERHEAD POWER LINE
- SD EXISTING STORM DRAIN
- SS EXISTING SANITARY SEWER
- W EXISTING WATER MAIN
- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- T EXISTING TELEPHONE MANHOLE
- EXISTING UTILITY POLE
- EXISTING TELEPHONE PEDESTAL
- D EXISTING STORM MANHOLE
- EXISTING STORM CATCH BASIN
- S EXISTING SANITARY MANHOLE
- PROPOSED SOAKAGE TRENCH
- PROPOSED PERFORATED STORM PIPE
- PROPOSED STORM TOP OF BANK
- PROPOSED STORM BOTTOM OF BANK
- SD PROPOSED STORM PIPE
- SS PROPOSED SANITARY PIPE
- W PROPOSED WATER MAIN
- D PROPOSED STORM MANHOLE
- PROPOSED CATCH BASIN
- PROPOSED CURB INLET
- PROPOSED ROUND AREA INLET
- PROPOSED STORM CLEANOUT
- S PROPOSED SEWER MANHOLE
- PROPOSED SEWER CLEANOUT
- PROPOSED HYDRANT
- PROPOSED VALVE
- BLOW-OFF / AIR RELEASE ASSY.
- PROPOSED LIGHTING

N  
W ↑ E  
S

SCALE: 1" = 50'

0 50 100 FT

811  
Know what's below.  
Call before you dig.



PUBLISH DATE  
2021-09-10  
ISSUED FOR  
PERMIT SET  
REVISIONS



COMPOSITE UTILITY PLAN  
**RHODODENDRON ARBOR**  
**PLANNED UNIT DEVELOPMENT**  
APIC FLORENCE HOLDINGS, LLC  
FLORENCE, OR

LRS  
ARCHITECTS  
**PLACE**  
3J  
3J CONSULTING

PROJECT INFORMATION  
PROJECT # | 19555  
LAND USE # | PC 20 07 PUD 01 & PC 20 08 SUB 01  
TAX LOT(S) | 700, 1900, 3800  
DESIGNED BY | JTE, TEG, ZMS, JKG  
CHECKED BY | AJM

SHEET NUMBER  
**C300**

**MASTER DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
RHODODENDRON ARBOR MASTER ASSOCIATION**

Grantor/Declarant: APIC FLORENCE HOLDINGS LLC

Grantee/Community: Rhododendron Arbor, a planned community, RHODODENDRON  
ARBOR MASTER ASSOCIATION, an Oregon nonprofit corporation

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**MASTER DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
RHODODENDRON ARBOR MASTER PLAN  
RHODODENDRON ARBOR MASTER ASSOCIATION**

This Master Declaration of Covenants, Conditions, Restrictions and Easements is made by APIC FLORENCE HOLDINGS, LLC, an Oregon limited liability company, as the Declarant and owner of the Property described below.

Declarant is the owner of certain real property located in the City of Florence, County of Lane, Oregon, described in **Exhibit A** attached and incorporated by reference into this Declaration ("Property"). The Property is comprised of the real property legally described in **Exhibit A** and any other real property added by an amendment to this Declaration according to the procedures in this Declaration.

On November 9, 2020, the City Council approved Resolution No. 28 Series 2020 ("Resolution"), affirming the Planning Commission Approval of Appealed Resolution PC 20 07 PUD 01/Resolution PC 20 08 SUB 01 with amended conditions (the "Approvals") authorizing the development of the planned community described therein (the "Master Community"). The Master Community is a Class I planned community within the meaning of ORS 94.550(3).

Declarant plans to develop, own and convey the Property subject to these covenants, conditions, restrictions and easements and subject to any other matters of record.

Declarant hereby declares that all of the Property shall be held, leased, encumbered, used, occupied, improved, sold and conveyed subject to the following covenants, conditions, restrictions, reservations and easements, all and each of which are for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property, in furtherance of a general plan for the protection of the Property. All and each of these covenants, conditions, restrictions, and easements are hereby imposed as equitable servitudes upon the Property. They shall run with the Property, and every portion thereof shall be binding on all parties having or acquiring any right, title or interest in the Property, and every portion thereof, and their lessees, guests, heirs, successors and assigns, shall inure to the benefit of every portion of the Property and any interest therein, shall inure to the benefit of each Owner, and his or her heirs, successors and assigns, and may be enforced by the Owners, the Association and Declarant in accordance with the terms of this Declaration. Acceptance of any portion of the Property will be deemed acceptance of the terms and provisions of this Declaration.

**NARRATIVE AND PURPOSE**

The Master Community encompasses a total area of approximately 9.4 acres, and includes approximately 6.61 acres for the purpose of development and approximately 2.79 acres of recreational parks and open space. The goal of the Master Community is to provide a mixed-use community offering prospective owners a place to live, play and enjoy their surroundings.

The Master Community contains lots for the development of several different types of residential housing and multi-family buildings. These are 31 Residential Housing Lots, 49

Townhome Lots, and 2 Apartment Lots to accommodate 40 multi-family apartment units, and Common Areas (See Section 2.6 below). The Common Areas include includes parks, open spaces, and other facilities that serve the entire community. These features, along with the diversity of housing and land use, require the adoption of this Declaration and other documents and the creation of an organization responsible for the management of all amenities and utilities contained in the Master Community. Additionally, the Declarant finds that the creation of a master association will assist in the individual development of parcels throughout the Master Community at the direction of the Declarant.

The Declarant intends to dedicate to the City the Proposed Dedication Row.

Therefore, Declarant hereby declares the creation of the Association and this Declaration for the purpose of providing governance for the Master Community subject to this Declaration and the active management of all regional amenities, utilities and facilities. The Association is subject to the Act.

## **ARTICLE 1 - DEFINITIONS**

The following words, when used in this Declaration, and in any amendment to this Declaration, have the following meanings unless otherwise expressly provided in this Declaration or an amendment:

1.1 “**Act**” shall mean the Oregon Planned Community Act, as may be amended from time to time (ORS 94.550-94.785).

1.2 “**Articles**” means the Articles of Incorporation of the Association which have been or will be filed in the office of the Secretary of State of the State of Oregon, as such Articles may be amended from time to time.

1.3 “**Assessment(s)**” mean all assessments imposed pursuant this Declaration, including, without limitation, General Assessments, Capital Improvement Assessments, Special Assessments, and Reconstruction Assessments. Assessment shall not include any assessments levied by a Sub Association, which assessments with be governed by the Sub Association’s Governing Documents.

1.4 “**Assessment Period**” means a calendar year for General Assessments, and such other period as determined by the Board for other Assessments.

1.5 “**Association**” means the Rhododendron Arbor Master Association, an Oregon non-profit corporation, its successors and assigns.

1.6 “**Sub Association**” means any other non-profit association governing a portion of the Property located within the Master Community.

1.7 “**Association Lien**” means a lien in favor of the Association imposed pursuant to this Declaration.

1.8     **“Board of Directors”** or **“Board”** means the Board of Directors of the Association.

1.9     **“Budget”** means the operating budget for the Association adopted pursuant to Section 4.4 below.

1.10    **“Bylaws”** mean the Bylaws of the Association, as adopted by the Board, and as may be amended from time to time.

1.11    **“Capital Improvement Assessment(s)”** means an Assessment imposed pursuant to Section 4.4 below.

1.12    **“Capital Improvement Work”** has the meaning ascribed to it in Section 4.4 below.

1.13    **“Class”** means a Class of Membership in the Association as described in Section 3.11 below.

1.14    **“Close of Escrow”** means the date on which a deed conveying a Lot is Recorded.

1.15    **“Common Areas”** mean all real property and Improvements: (a) owned, maintained or leased by the Association; and (b) in which the Association has an easement for access or maintenance for the use, enjoyment, and benefit of the Members. The Common Areas may be improved with certain common facilities and, if and when improved, shall include such common facilities. If meeting the definition above, the Common Areas may include (where applicable, if and when improved) common greens and open space areas, including Improvements thereon, street lights, street trees and other landscaping, Signs, recreational, picnic and athletic facilities, pedestrian and hiking paths and trails, bicycle paths, private lanes, irrigation systems located in public rights of way, drainage and storm water detention areas and sewer, water, storm drainage, and other utility systems located on or in the Common Areas. In addition or specific to the above list, the Common Areas include the areas and facilities as determined by the Declarant or Board of Directors.

1.16    **“Common Expenses”** means all costs and expenses incurred by the Association, including, but not limited to, the following: (a) expenses of administration, maintenance, and operation, including, but not limited to, reasonable compensation to employees of the Association, (b) costs of maintenance, repair, replacement and capital improvement of the Common Areas and any Improvements thereon, (c) premiums or deductibles for all insurance policies and bonds required or permitted by this Declaration, (d) all real property and other taxes and assessments on the Common Areas, (e) utility and service charges, (f) funding of reserves for anticipated operational shortfalls or for replacement of capital items, (g) funding of reserves for the replacement of the Common Areas and any improvements and community facilities therein, and start-up expenses and operating contingencies of a nonrecurring nature, (h) legal fees and costs, (i) the costs of recovering unpaid Assessments, including legal fees and other costs of foreclosure of an Association Lien, (j) expenses of administration, maintenance, operation, repair or replacement of landscaping performed by the Association or the Association’s agent on the Owners’ Lots, (k) costs payable under Section 3.6.2 below, (l) the cost of maintaining or repairing any storm water drainage system, and (m) any other costs and

expenses determined from time to time as reasonably necessary by the Board to carry out the purposes of this Declaration, or as otherwise incurred by the Association pursuant to this Declaration. Common Expenses include the maintenance costs for any property dedicated to a public entity for which the Association retains the obligation to maintain. Such assessments are addressed in Section 4.11.

1.17 “**Declarant**” means APIC FLORENCE HOLDINGS LLC, an Oregon limited liability company, and any Person who has been specifically assigned, in whole or in part, any of its rights hereunder by an express written assignment prior to the Turnover Date. Declarant shall hold the rights contained herein during the Development Period.

1.18 “**Declaration**” means this Declaration of Covenants, Conditions, Restrictions and Easements for Rhododendron Arbor Master Association, as it may be amended from time to time.

1.19 “**Development Period**” means the period of time from the date of Recording this Declaration until the Turnover Date.

1.20 “**Development Rights**” mean those rights of Declarant reserved throughout this Declaration. Declarant may exercise any and all Development Rights at any time during the Development Period in Declarant’s sole discretion.

1.21 “**General Assessment(s)**” mean Assessments imposed by the Association pursuant to Section 4.3 below.

1.22 “**Governing Documents**” means those documents identified in ORS 94.550 et seq.

1.23 “**Improvement**” means all structures and appurtenances thereto of every kind, whether above or below the land surface, including but not limited to, buildings, dwellings, garages, utility systems, walkways, driveways, parking areas, loading areas, landscaping items, swimming pools, sports courts, fences, walls, decks, stairs, poles, landscaping vegetation, irrigation systems, Streets, Signs, exterior fixtures, playfields and appurtenant facilities, recreational facilities, play structures, picnic structures and any other structure of any kind.

1.24 “**Institutional Lender**” means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds or business trusts, including, but not limited to real estate investments trusts, any other lender regularly engaged in financing the purchase, construction, or Improvement of real estate, or any assignee of loans made by such a lender, or any private or governmental institution which has insured the loan of such a lender, including Federal Mortgage Agencies, or any combination of any of the foregoing entities.

1.25 “**Lane**” means those lanes as depicted on the Plat.

1.26 “**Lot**” means each separate parcel, including in a recorded Plat, to be used for construction of approved development and which is not a Common Area nor dedicated to the public.



1.27 “**Majority Vote**” means a vote of more than 50% of the Total Voting Power of the Association or Board.

1.28 “**Map**” or “**Plan**” means any master site plan and any amendments to the Plan, referred to in the Resolution.

1.29 “**Member**” shall mean every person or entity who or which holds a Membership in the Association, as provided in Section 3.9 below. “Membership” means the status of being a Member.

1.30 “**Mortgage**”; “**Mortgagee**”; and “**Mortgagor.**” A Mortgage means any recorded mortgage or deed of trust on a Lot. A Mortgagee means any holder of a Mortgage and is deemed to include the beneficiary of a deed of trust. A Mortgagor means the borrower under a Mortgage and is deemed to include the trustor or grantor of a deed of trust.

1.31 “**Occupant**” means a tenant, lessee or licensee of an Owner or any other person or entity, other than an Owner, in lawful possession of a Lot, or a portion thereof, with the permission of the Owner.

1.32 “**Owner**” means the Person(s), including Declarant, holding fee simple title of record to any Lot, including purchasers under recorded executory contracts of sale. “Co-Owners” means more than one Owner. “Ownership” means the status of being an Owner. The Declarant is an Owner until it sells the last Lot within the Property, including within additional properties added to this Declaration and the Association during the Development Period.

1.33 “**Person**” means a natural individual, partnership, limited liability company, company, corporation or any other entity with the legal right to hold title to real property.

1.34 “**Plat**” means the legally adopted and recorded subdivision of Rhododendron Arbor, which depicts the Lots, Tract and Lanes.

1.35 “**Property**” means all of the real property described in Exhibit A to this Declaration and all real property added by amendment of this Declaration and/or the Map.

1.36 “**Prorata Share**” means, for any particular Owner, that portion of any Assessment it is responsible for paying.

1.37 “**Reconstruction Assessment(s)**” means an Assessment imposed pursuant to Section 11.1 below.

1.38 “**Record**” or “**File**” means, with respect to any document, the recordation thereof, and with respect to any map, the filing thereof, in the official Records of Lane County, Oregon.

1.39 “**Signs**” means any structure, device or contrivance, electric or nonelectric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device, or other advertising of any kind whatsoever is used placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

1.40 “**Special Assessment(s)**” means an Assessment imposed as a Special Assessment pursuant to any provision of this Declaration.

1.41 “**Street**” means any public or private street, drive-way lane (if located in a public right of way or Common Area), place or other thoroughfare either as shown on the Map or any recorded survey, plan or Plat of the Property, however designated, or as so used as a part of the Common Areas.

1.42 “**Sub Association**” means the sub homeowners associations that are created to administer the Residential Detached Lots and Townhome Lots in subsequently filed sub-declaration of covenants, conditions, and restrictions. Any Sub Association shall be subordinate to the Association and adhere to the terms of this Declaration.

1.43 “**Tract**” shall mean those tracts as specified and as shown on the Plat and any improvements thereon

1.44 “**Turnover Date**” means the date the last of the Lots have been conveyed by Declarant, including Lots within additional properties added by Declarant to this Declaration prior to expiration of the Development Period; provided, however, that Declarant may accelerate the Development Rights Turnover Date by recording a written notice surrendering Declarant’s rights arising under this Declaration.

## **ARTICLE 2 - PHASED DEVELOPMENT; DEVELOPMENT RIGHTS**

2.1 **Conveyance of by Declarant to Association.** Declarant conveys to the Association the Common Areas that services the Master Community that is not the responsibility of a governmental entity. Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest. Such conveyance shall be accepted by the Association, and the property shall thereafter be maintained by the Association for the benefit of all or a part of its Members. Except as otherwise set forth herein, a Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

2.2 **Additional Properties.** Declarant reserves as a Development Right the right to add and subject additional properties to this Declaration at any time prior to termination of the Development Period. There is no limitation on the number of Lots that Declarant may create or annex to the Property, except as may be established by applicable law. Declarant further reserves as a Development Right the right to withdraw Common Areas or any properties it owns from this Declaration at any time prior to termination of the Development Period. Each Owner appoints and constitutes the Declarant as his/her attorney-in-fact to unilaterally adopt and file amendments to this Declaration necessary to add or subtract such properties to and from this Declaration consistent with these Development Rights. The Declarant shall also have as a Development Right the right to extend existing easements and may create new easements over any Common Area or over any Lot still within Declarant’s control so as to provide access to and serve the additional properties. The rights reserved by Declarant in this Section shall be exercised by Declarant at Declarant’s sole discretion.

2.3 **Rights and Obligations.** The Owners of properties added to this Declaration shall be Members of the Association, and shall be entitled to all benefits and subject to all obligations of a Member, including, but not limited to, representation in the Association and the obligation to pay assessments as set forth herein.

2.4 **No Requirement to Include Additional Properties.** Nothing contained in this Declaration shall be construed to require the Declarant to subject additional properties to this Declaration.

2.5 **Dedication to Governmental Entities.** Until the termination of the Development Period, Declarant reserves the right to dedicate, transfer or convey it to any state, county, municipal or other governmental entity the Common Areas, or any part of the Property it owns, or reserve the foregoing areas for Declarant's use and/or sale. The rights reserved by Declarant in this Section shall be exercised by Declarant at Declarant's sole discretion.

2.6 **Classification of Property.** All land within the Master Community is included in one or another of the following classifications.

2.6.1 Residential Detached Lot, shall consist of Lots 51 through 81, as identified on the Plat ("Residential Detached Lots").

2.6.2 Townhome Lots shall consist of Lots 2 through 50, as identified on the Plat ("Townhome Lots").

2.6.3 Apartment Lots shall consist of Lots 1 and 82, as identified on the Plat that are multifamily properties ("Apartment Lots"), including without limitation the parking lots located thereon.

2.6.4 Common Areas, which are the areas marked Tracts A through L, Windsong Loop, and the Lanes labeled Autumn Gold Lane, Bellrose Lane, Coral Mist Lane, Dappled Dawn Lane, Evening Glow Lane, and Fair Sky Lane on the Plat.

2.6.5 Notwithstanding any provision apparently to the contrary, Declarant is not obligated to build any improvements described herein. Declarant hereby reserves the right to build any improvement(s) not described in the Declaration; and Declarant hereby reserves the right to expand the uses described herein.

### **ARTICLE 3 - THE ASSOCIATION**

3.1 **Formation.** The Association has been, or will be, incorporated under the name of Rhododendron Arbor Master Association, as a non-profit corporation for the purposes of managing a planned community pursuant to ORS, Chapter 94.550 et seq. Declarant may change the name of the Association during the Development Period in its sole discretion.

3.2 **Development Period.** During the Development Period, the Declarant shall have no obligation to publish financial statements, hold meetings or otherwise account to or consent with the Members, except as required ORS 94.650 et seq., or as expressly required herein. The Declarant shall have full control of the Association until the Turnover Date. During the

Development Period, the Declarant shall have the sole authority to (1) appoint or remove members of the Board of Directors who need not be Owners; (2) appoint or remove officers of Association who need not be Owners; (3) determine when to commence charging assessments; (4) veto or approve any action of the Board of Directors or Owners in its sole discretion; (5) unilaterally adopt and record amendments to this Declaration without any other Owner approval, including but not limited to amendments subjecting additional property to this Declaration, and any modified or additional restrictions; (6) adopting and amending Bylaws; (7) establishing Sub Associations and preparing, executing and recording Sub Associations' Governing Documents; and (8) adding or subtracting properties from this Declaration and the Association, as further provided in this Declaration. The Declarant's control of the Association during the Development Period is established in order to ensure that the Property, and the Association will be adequately administered in the initial phases of development and to ensure an orderly transition of Association operations. Upon termination of the Development Period, administrative power and authority for management of the Common Areas shall pass to the Board of Directors and Members as provided herein and in the Bylaws of the Association.

3.3 **Bylaws.** Prior to the termination of the Development Period, the Declarant, acting pursuant to its authority to act on behalf of the Association, shall adopt Bylaws and record them in the county in which the Property is located. The Bylaws may contain supplementary, but not inconsistent, provisions regarding the operation and administration of the Property. The Bylaws shall at minimum establish the provisions for quorum, meetings, and details regarding the giving of notices as may be required for the proper administration of the Association and the Property.

3.4 **Board of Directors.** The Association shall be managed by a Board of Directors, elected or appointed in accordance with this Declaration, the Articles, and the Bylaws of the Association.

3.5 **Delegation to Manager.** The Board may delegate any of its managerial duties, powers, or functions to any Person or entity unless prohibited by law. The Board members shall not be liable for any omission or improper exercise by the manager of any duty, power, or function so delegated by written instrument and entered into by the requisite vote of the Board.

3.6 **Duties and Powers of Association.** The duties and powers of the Association are those set forth in its Articles and Bylaws, together with its general and implied powers as a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Oregon may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles, its Bylaws, the Plats, this Declaration, and the law.

3.6.1 **Purposes.** Specifically, but not by way of limitation, the Association shall effectuate the purposes of this Declaration, including but not limited to: (i) adopting and enforcing rules and regulations; (ii) adopting an operating and capital budget; (iii) controlling and administering the Association's funds, including the levy, collection, and disbursement of Assessments; and (iv) administering and enforcing this Declaration. The Association shall have the authority and obligation to establish, manage, repair, and administer the Common Areas. Subject to the approval of any applicable governmental agency, the Association may at any time,



and from time to time, construct, reconstruct, improve, replace and/or restore any Improvement or portion thereof upon the Common Areas, and the Association may construct, reconstruct, improve and/or replace trees or other vegetation and plant trees, shrubs, ground cover and other landscaping upon the Common Areas. The Association may employ personnel necessary for the effective operation and maintenance of the Common Areas, including the employment of legal and accounting services.

3.6.2 **Operating Costs.** The Association shall be responsible for the payment of power bills, maintenance, repair, and any other associated operating costs for the Common Areas and the Improvements thereon unless that responsibility is otherwise assigned by this Declaration, the Map or regulations of a governmental agency with jurisdiction over the same.

3.6.3 **Rules and Regulations.** The Board shall have the power to adopt from time to time and to enforce rules and regulations governing the use of all Common Areas, whether or not expressly contemplated herein, provided that such rules and regulations shall not be inconsistent with this Declaration. The rules and regulations may not unreasonably differentiate among Owners. The Board may prescribe penalties for the violation of such rules and regulations, including but not limited to suspension of the right to use the Common Areas or portions thereof, and the imposition of fines pursuant to a previously adopted schedule thereof. Any such rules and regulations, and/or amendments thereto, shall become effective thirty (30) days after promulgation and shall be mailed to all Owners within thirty (30) days after promulgation. A copy of the rules and regulations in force at any time shall be retained by the secretary of the Association and shall be available for inspection by any Owner during reasonable business hours. Such rules shall have the same force and effect as if set forth herein.

3.7 **Association Priorities and Inconsistencies.** In the event of conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail.

3.8 **Sub Association Subordination to Master Association.** Governing Documents of any and all Sub Associations which may be created with respect to a portion of the Property are automatically subordinate to the Governing Documents of the Association unless otherwise provided in writing by Declarant during the Development Period. In the event of conflicts or inconsistency between the Governing Documents of a Sub Association and the Association, the Governing Documents of the Association shall control. During the Development Period, the Declarant has the sole right in its discretion to create Sub Associations and prepare and execute any Governing Documents established for a Sub Association.

3.9 **Membership.** An Owner of a Lot is automatically a Member of the Association and will remain a Member until such time as Ownership ceases for any reason, at which time such Membership will automatically cease. The Owners covenant and agree that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and adopted Rules and Regulations. The rights, duties, privileges and obligations of all Members shall be as set forth in this Declaration, the Articles, the Bylaws, the Rules and Regulations and applicable law.

3.10 **Transfer.** Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or conveyance of such Owner's Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association.

3.11 **Voting Rights.**

3.11.1 Voting Rights. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of a Lot to a new Owner shall operate to automatically transfer the appurtenant vote without the requirement of any expressed reference thereto. Notwithstanding the foregoing, the voting rights of any Member may be suspended as provided in this Declaration, the Articles, or the Bylaws. Member votes may be tabulated by mail, facsimile, email, or other electronic transmission.

3.11.2 Classes of Membership. The Association shall have three Classes of Membership ("Total Voting Power of the Association"), Class A, Class B, and Class C as follows:

Class A. Class A Membership shall consist of all Owners who shall be entitled to one vote for each residential Lot that it owns.

Class B. Class B Membership shall consist of the Owners (but not the tenants) of the Apartments Lots who shall be entitled to one vote for each apartment unit.

Class C. Class C Membership shall consist of the Declarant who shall be entitled to three votes for each residential Lot and apartment unit that it owns. Class C Membership will terminate on the Turnover Date.

3.11.3 Co-Owners. Co-Owners must, by written notice delivered to the Board, designate a voting representative for their voting rights. The Association shall have no responsibility to accept any vote for a Lot owned by Co-Owners, if such vote is disputed among the Co-Owners. The vote of a Lot must be cast as a single vote, and fractional votes shall not be allowed. In the event more than one vote is cast for a particular Lot, none of those votes shall be counted and those votes shall be deemed void.

3.11.4 Proxies. Members may vote at any meeting of the Association in person or by proxy as further detailed in the Bylaws.

3.12 **Transitional Advisory Committee.** Declarant must call a meeting of the Owners for the purpose of selecting a transitional advisory committee not later than 60 days after the date Declarant conveys 50% or more of the Lots then existing in Master Community to Owners other than a successor declarant. The committee will consist of at least three members, two or more of whom are selected by the Owners other than Declarant, and no more than one member may be selected by Declarant. An Owner may call a meeting to elect the transitional advisory committee if Declarant fails to do so. The Transitional Advisory Committee shall be advisory only, and its purpose shall be to enable ease of transition from administrative control of the Association by Declarant to control by the Owners. The committee shall have access to any information, documents and records that Declarant must turn over to the Owners at the time of the Turnover

Meeting. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

**3.13 Turnover and Management by Elected Board of Directors.** Turnover Meeting. Declarant must call a meeting for the purposes of turning over administrative control of the Association from Declarant to the Class A and Class B Members (the "Turnover Meeting") within 90 days of expiration of the Development Period. Declarant must give notice of the Turnover Meeting to each Owner as provided in the Bylaws. If Declarant does not call the Turnover Meeting required under this Section within the 90-day period, the Association or any Owner or Mortgagee may do so. At the Turnover Meeting, the Owners shall elect a new Board, a majority of whom must be Owners. The number of Board members and their terms of services shall be specified in the Bylaws. The Board shall elect officers in accordance with the procedures provided in the Bylaws. The members of the Board and officers shall take office upon election. Removal of Board members, and their terms of service shall be as provided in the Bylaws, except that the Owners may not remove any Director appointed by Declarant pursuant to the Declarant's right to control the Association. If the Declarant fails to call the Special Meeting within 90 days of the expiration of the Development Period as set forth herein, the Special Meeting may be called by any group of not less than 10 Owners, provided that the Members calling the meeting shall follow meeting notice provisions set forth herein and as may be set forth for meetings of Owners in the Association Bylaws.

#### **ARTICLE 4 - ASSESSMENTS**

**4.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner of a Lot by acceptance of a deed for the Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association any Assessment duly levied by the Association as provided in this Declaration, or by a Sub Association as provided in its declaration. Such Assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall also be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, late charges, and attorneys' fees (including all such costs and fees incurred in connection with collection of the Assessment), shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to an Owner's successor in title unless the lien for such delinquent Assessments had been recorded prior to title transfer or unless expressly assumed by the successor in title; provided however, an Assessment lien need not be recorded to be a valid lien against the Lot. When Ownership of a Lot changes, Assessments which have been levied but are not yet due and payable in full shall be prorated between the transferor and the transferee based on a 365-day year.

**4.2 Sub Association Liability for Collection and Payment.** Each Sub Association is responsible for the collection of assessments due and owing under its declaration from individual Lot Owners within the jurisdiction of the Sub Association. Each Sub Association must collect the Assessments and transmit the Assessments that it has a responsibility to collect by check or wire transfer on a quarterly basis to the treasurer of the Association. Failure to collect and convey the full amount of the Assessments due from Lot Owners by the Sub Association within its jurisdiction will result in penalties as described in ARTICLE 5.

#### **4.3 Budget and General Assessments.**

4.3.1 Association Budget. Except for the Initial Budget adopted by the Declarant, by October 1<sup>st</sup> of each year, the Board shall prepare, or cause the preparation of, an operating budget (the "Budget") for the Association for each ensuing calendar year. Every Budget shall set forth sums required by the Association, as estimated by the Board or Declarant, to meet its annual Common Expenses. Within thirty (30) days after adoption by the Board or Declarant of any proposed regular or special Budget of the Association. In the event the Board fails to adopt a yearly Budget, the periodic Budget last ratified by the Owners shall be continued until such time as the Board adopts a new Budget. If during the year the Budget proves to be inadequate for any reason, including because of nonpayment of any assessments that a Sub Association is required to collect, the Board may prepare a supplemental Budget for the remainder of the year.

4.3.2 Levy of General Assessment. In order to meet the costs, expenses and moneys to be allocated to the Reserve Account (as defined below) projected in its Budget, the Board shall determine and levy a General Assessment. Each General Assessment shall be based on the gross acreage within each Sub Association's jurisdiction. Each Sub Associations' Assessment for each Owner will be based on the total amount of the General Assessment for the Sub Association divided by all Lots within the jurisdiction of the Sub Association multiplied by the number of Lots each Owner owns. If a Lot is not part of a Sub Association, the Association shall directly bill the Owner of that Lot its Prorata Share of the General Assessments.

4.3.3 Payment of General Assessment. Except for Initial Assessments, General Assessments shall be payable in a lump sum annually on the date determined by the Board or may be billed on a quarterly or monthly basis, if the Board so elects. General Assessments shall commence on all or any portion of the Property on the date determined by the Board in its sole discretion.

4.3.4 Initial Assessment. At the time of the first transfer of title to a Lot to an Owner other than Declarant, the Owner shall pay to the Association at the Close of Escrow, an Initial General Assessment. The Initial General Assessment is the Prorata amount of the current General Assessment applicable to a Lot for the year in which the Lot is purchased, as of the Close of Escrow, which amount shall be prorated on a 365-day per year basis. The Declarant shall not be responsible for paying the balance of the General Assessment which is not paid as the first Owner's Initial General Assessment. The Initial General Assessment will be considered Association funds.

4.3.5 Amount of General Assessment. After adoption of the Budget, the Board shall notify the Sub Associations, or Owners of a Lot not within a Sub Association, of the amount of the General Assessment payable by each Sub Association or Owner for an Assessment Period at least thirty (30) days in advance of its due date; provided, however, that failure to notify a Sub Association or Owner of the amount of a General Assessment shall not render such General Assessment void or invalid and each Sub Association and Owner shall be obligated for such General Assessment even if no notice is given, and/or notice is given late. Any failure by the Board, before the expiration of any Assessment Period, to fix the amount of the General Assessment hereunder for the next Assessment Period, shall not be deemed a waiver or



modification in any respect of the provisions hereof or a release of any Sub Association or Owner from the obligation to pay the General Assessment, or any installment thereof, for that or any subsequent Assessment Period.

4.3.6 Assessment Period. The amount of the General Assessment for the preceding Assessment Period shall continue until a new Budget is approved. The Assessment Period for General Assessments shall be a calendar year, except that upon any revision of the Budget by a supplemental Budget, the Board shall, if necessary, recalculate the General Assessment levied against the Owners and give notice of the same in the same manner as the initial levy of a General Assessment for the Assessment Period, which revision may be applicable within the current Assessment Period. The Assessment Period for any other Assessment shall be as determined by the Board.

4.3.7 Assessment Method. Association Assessments must be collected by each Sub Association through its duly adopted budget, which budget must be consistent with the General Assessment levied by the Board. Each Sub Association is required to include as a line item in their budget "Master Association Dues" equal to the amount adopted by the Board.

#### 4.4 **Capital Improvement Assessments.**

4.4.1 Capital Improvement Work. In addition to the General Assessments authorized by this Article, the Board may levy Capital Improvement Assessments at any time for the purpose of paying the cost of any installation, construction, reconstruction, repair or replacement of any capital improvements ("Capital Improvement Work") in, on, over, below or about any Common Area, or for such other purposes as the Board may consider appropriate, and a Capital Improvement Assessment need to be reflected in an adopted budget. Capital Improvement Assessments during the Development Period are at the sole discretion of the Declarant. Capital Improvement Assessments after the Turnover Date shall require a Majority Vote of the Board. Each Owner's Prorata Share of the Capital Improvement Assessment shall be calculated and collected in the same manner as for General Assessments. Capital Improvement Assessments shall be payable in one lump sum, or in installments, as determined by the Board. The Association may charge interest on any Capital Improvement Assessment payable in installments, as determined by the Board, and such interest shall become part of the installments due. Capital Improvement Assessments may be levied either before or after the Capital Improvement Work is done, at the discretion of the Board.

4.4.2 Special Facilities. If the Association determines that costs incurred for Capital Improvement Work are in connection with facilities shared in common by one or more, but fewer than all, of the Lots, then the Capital Improvement Assessment for such Capital Improvement Work shall be assessed only against the Sub Associations, Lots for Owners of the Lots served by such facilities, and shall be calculated and collected in same manner as General Assessments.

4.5 **Special Assessments**. The Association may levy Special Assessments against one or more Lots to reimburse the Association for costs expended to bring a Lot into compliance with this Declaration or for any benefit received by the Lot that is not enjoyed by all Owners as a whole. Special assessments levied against less than all of the Lots shall not require a vote of the

Owners but may be approved and assessed by the Board of Directors. Special Assessments shall be payable in one lump sum, or in installments, as determined by the Board. The Association may charge interest on any Special Assessment, as determined by the Board, and such interest shall become part of the installments due. The Sub Association associated with each Special Assessment is responsible for collection of the Special Assessment and transmittal of the Assessments to the Association's treasurer.

**4.6 Accounts.** Any Assessments collected by the Association shall be deposited in one or more federally insured institutional depository accounts established by the Board. The Board shall have exclusive control of such accounts and shall maintain accurate records thereof. No withdrawal shall be made from said accounts except to pay for charges and expenses authorized by the Association's Governing Documents.

**4.7 Waiver of Homestead or exemption Rights Under Law.** Each Owner hereby waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law in effect at the time any Assessment or installment thereof becomes due and payable pursuant to the terms hereof.

**4.8 Records and Financial Statements.** The Board shall prepare or cause to be prepared for any fiscal year in which the Association levies or collects any Assessments, a balance sheet and an operating (income/expense) statement for the Association which shall include a schedule of delinquent Assessments identified by the Sub Association, and the name and address of the delinquent Owner; provided, however, such documents need not be prepared by a certified public accountant unless requested by the Board. The annual financial statement of the Association need not be audited unless the total of all Assessments for the year for all Lots is \$75,000 or more. The Board shall cause detailed and accurate records of the receipts and expenditures of the Association to be kept specifying and itemizing the maintenance, operating, and any other expense incurred. Such records, copies of this Declaration, the Articles and the Bylaws, and any resolutions authorizing expenditures of Association funds shall be available for examination by any Owner at convenient weekday hours upon reasonable advance notice determined by the Board.

**4.9 Certificate of Assessment.** A certificate executed and acknowledged by the treasurer or the president of the Association (or an authorized agent thereof, if neither the president nor treasurer is available) stating the indebtedness for Assessments and charges, or lack thereof, upon any Lot shall be conclusive upon the Association as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith. Upon written request to the Association, such a certificate shall be furnished to any Sub Association, Owner or any Mortgagee of a Lot within a reasonable time after request, and the Association may charge a reasonable fee. Unless otherwise prohibited by law, any Mortgagee holding a lien on a Lot may pay any unpaid Assessments or charges with respect to such Lot, and, upon such payment, shall have a lien on such Lot for the amounts paid.

**4.10 Contribution to Working Capital Fund.** In connection with the Close of Escrow for the closing of the sale of each Lot to an Owner other than Declarant, the Owner of such Lot shall make a nonrefundable working capital contribution payment to the Association for an initial working capital fund ("Working Capital Fund"), which contribution shall be in an

amount equal to two times the then-effective monthly General Assessment (the “Initial Working Capital Contribution”) or such other amount as the Board determines from time to time is appropriate. The Initial Working Capital Contribution shall not be considered as an advance payment of any Assessments. The Working Capital Fund may be used as determined by the Board. The Initial Working Capital Contribution may be collected prior to the commencement of General Assessments

**4.11 Assessments for Property Dedicated.** The Declarant shall advance any funds necessary to pay the maintenance costs associated with property that may be required to be dedicated to a public entity (“City Assessment”). When the Board notifies a Sub Association of the amount of the General Assessment payable by each Sub Association under Section 4.3.5, the notice shall include, in addition to the General Assessment, the amounts due from the Sub Association for its budgeted Prorata share of the City Assessment (“Reimbursement”) based on the formula in Section 4.3.2. A Sub Association shall be responsible for collecting the Reimbursement from each Lot within its jurisdiction that is not owned by the Declarant, and transmitting the Reimbursement to the Association. If the Reimbursement amount collected from each Lot in a Sub Association is less than the Sub Association’s budgeted Prorata Share of the Reimbursement, the shortfall will be added to the next year’s Reimbursement amount until the Declarant is reimbursed in full for the City Assessments it has paid. The Association shall be responsible for transmitting all Reimbursements it receives to the Declarant within 5 business days of receipt.

**4.12 Reserve Account.** Declarant must establish one or more reserve accounts, in the name of the Association which must be kept separate from all other funds held by the Association in an FDIC insured institution (“Reserve Account”). The Association will pay out of the Reserve Accounts only those costs that are attributable to the maintenance, repair, or replacement of the Common Areas, improvements located in the Common Areas, and any other maintenance items for which the Association is responsible, which come due in at least one and not more than 30 years. No funds collected for a Reserve Account may be used for ordinary current maintenance and operation purposes, except as otherwise provided in the Declaration. The Association shall use the moneys specifically allocated to the reserve account in the Budget only for maintenance, repair or replacement of Common Areas for which they were collected.

**4.12.1** After the Turnover Meeting, the Board may borrow funds from the Reserve Account(s) to meet high seasonal demands on the Association’s regular operating fund or to meet unexpected increases in expenses. Funds borrowed must be repaid later from assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board must adopt by resolution a written payment plan providing for repayment within a reasonable period.

**4.12.2** At any time after the second year after the Turnover Meeting, future assessments for the Reserve Account(s) may be increased or reduced by the Board up to a 50% increase, and thereafter, by a vote of Owners representing 60% of the votes of the Association.

4.12.3 Nothing in this Section prohibits the prudent investment of Reserve Account funds, subject to any constraints imposed by the Act, the Board, the Bylaws, or the Rules and Regulations.

4.12.4 Assessments paid into the Reserve Account(s) are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers or Owners of Lots may treat their outstanding share of a Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their Lot.

4.12.5 Association profits, if any, will be the property of the Association and will be contributed to the current operating account.

4.13 **Initial Reserve Study.** The Declarant, on behalf of the Association, shall:

4.13.1 Conduct an initial reserve study;

4.13.2 Prepare an initial maintenance plan; and

4.13.3 Establish a reserve account.

4.14 **Calculation of Reserve Assessment; Reserve Study.** The Board must annually conduct a reserve study, or review and update an existing study, of the Common Areas to determine the Reserve Account requirements. A Reserve Account must be established for those items of the Common Areas all or part of which will normally require replacement in more than one and less than 30 years; for exterior painting, as applicable; and for the maintenance, repair, or replacement of other items as may be required under the Declaration or Bylaws or that the Board, in its discretion, may deem appropriate. The Reserve Account need not include items that could reasonably be funded from operating assessments. The reserve study must include (a) identification of all items for which reserves are required by law to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a 30-year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair, and replacement schedule. The Reserve Account assessment must be allocated according to this Article 4.

4.15 **Annexation of Additional Property.** If additional property is annexed into Master Community, the Lots included therein shall become subject to Assessments as set forth herein from the date of such annexation. The Board, at its option, may elect to recalculate the budget based upon the additional Lots subject to Assessment and additional Common Areas and recalculate General Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a supplemental declaration annexing additional property may provide that such additional property does not have the right to use a particular Common Area or facility located thereon, in which case such additional property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.



## **ARTICLE 5 - NONPAYMENT OF ASSESSMENTS**

**5.1 Delinquency.** Any installment of any Assessment provided for in this Declaration shall be delinquent, if it is not paid on the due date as established by the Board. With respect to each installment of an Assessment not paid within ten (10) days after its due date, the Board may, at its election, require the Owner or the Sub Association responsible for the delinquent Owner to pay a late charge in the amount set forth in a previously approved schedule thereof which has been delivered to the Owners and the Sub Association, together with interest on such delinquent sum at a rate to be determined by the Board, but not to exceed the maximum rate permitted by law, calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board shall mail a notice to the Sub Association, the delinquent Owner, and to any Mortgagee of the delinquent Owner. The notice shall specify (1) the fact that the installment is delinquent; (2) the amount of the Assessment and any late fees and interest accrued thereon; and (3) that (a) failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Assessments for the then current fiscal year and (b) the Association has the right to record a lien ("Association Lien") against each individual Owner's Lot for the Pro-rata amount of the Assessment and related charges. The Association shall have the right to accelerate all of the unpaid balance of all Assessments for the then current fiscal year, attributable to any Owner and his Lot, or interest therein, after written notice as specified above. Such accelerated Assessments shall be immediately due and payable without further demand. The Association may record the Association Lien against the individual Owner's Lot and enforce the collection of the Assessments and all charges thereon in any manner authorized by law or by this Declaration, but a lien is not required to be recorded to be valid. All late fees, legal fees, interest or any other charges levied by the Association will be assessed against the Owner and billed through the applicable Sub Association.

**5.2 Lien and Notice of Lien.** Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or to foreclose an Association Lien provided for in Section 5.1 against an Owner and such Owner's Lot for the collection of delinquent Assessments. No action shall be brought to foreclose said delinquent Association Lien or to proceed under the power of sale herein provided sooner than thirty (30) days after the date a notice of claim of lien is recorded by the Association in the Office of the Lane County Recorder and a copy thereof is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot at said Owner's last known address. The notice of claim of lien must contain a sufficient legal description of said Lot, the record Owner or reputed Owner thereof, and the amount claimed, including, at the Association's option, the cost of preparing and recording the notice of claim of lien, interest on said unpaid Assessments and costs of collections, including attorney's fees. Each Owner, by acceptance of the deed for a Lot subject to this Declaration, acknowledges that all liens authorized hereunder are consensual and arise at the time the Assessments are levied.

**5.3 Foreclosure and Sale.** Any such foreclosure and sale provided for in Section 5.2 shall be conducted in accordance with the laws of the State of Oregon applicable to the exercise of powers of judicial and non-judicial foreclosures and sale of mortgages. The Association,

through its duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**5.4 Curing the Default.** Upon the timely curing of any default for which an Association Lien was recorded by the Association, the Board, or an authorized representative thereof, shall record an appropriate release of such notice upon payment by the applicable Owner of a fee to be determined by the Board to cover the cost of preparing and recording such release, together with the payment of such other costs, interests and fees as shall have been incurred by the Association by reason of such default. Any purchaser or encumbrancer, who has acted in good faith and extended value, may rely upon such release as conclusive evidence of the full satisfaction of the sums stated in the release.

**5.5 Cumulative Remedies.** The Association Lien and right of foreclosure and sale thereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Association, and/or its assigns, may have hereunder, in equity and at law, including, but not limited to, a suit to recover a money judgment for unpaid Assessments, or the suspension of an owner's right to vote until any Assessments unpaid for a period in excess of thirty (30) days are paid. Any institution of a suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages.

**5.6 Subordination of Association Liens.** All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies or liens which, by law, would be superior thereto, and (2) the lien or charge of any Mortgage of Record made in good faith and for value and recorded prior to the date the Board levies the Assessment through Board action. Upon the foreclosure of, or acceptance of a deed in lieu of foreclosure of, such a prior Mortgage that has priority over an Assessment Lien, the foreclosure purchaser or deed-in-lieu grantee shall take title free of the lien for unpaid, nonpriority Assessments, but subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure or deed given in lieu of foreclosure.

**5.7 Exempt Property.** The following property is exempt from the Assessments created herein and shall not be subject to liens for unpaid Assessments: (a) all properties dedicated to and accepted by a public authority; (b) all Common Areas; and (c) all vacant Lots, or other portions of the Property the fee title to which is retained by Declarant. Notwithstanding the forgoing, Declarant is not exempt from its share of the moneys specifically allocated for the Reserve Account which shall begin accruing from the date the first Lot in the Master Community is conveyed. Declarant may pay the balance of the accrued reserve moneys for a specific Lot at the time such Lot is conveyed. The books and records of the Association shall reflect the amount owing from the Declarant for all Reserve Assessments. Third Party Declarants of Sub Associations can be required to pay Assessments placed against Lots as provided for herein.

**5.8 Rights of Board - Waiver of Owners.** Each Owner hereby vests in and delegates to the Board, the right and power to bring all actions at law, including lien foreclosures, whether judicially or by power of sale or otherwise, against any Owner for collection of the delinquent assessments in accordance herewith. Each Owner hereby expressly waives any objection to the

enforcement in accordance with this Declaration, of the obligation to pay Assessments as set forth herein.

## **ARTICLE 6 - EASEMENTS, DEDICATIONS, AND RIGHTS OF ENTRY**

### **6.1 Easements.**

6.1.1 Reciprocal Easement for Residential Detached Lots. The Proposed 2' Wide Reciprocal Access Easement areas shown on the Plat are part of the Residential Detached Lots on which they are located and benefit and burden only the Lots to which they are contiguous.

6.1.2 Access. Declarant expressly reserves for the benefit of the Association and for the Owners of the Property reciprocal, non-exclusive easements over all of the Common Areas for access to the Lots and other Common Areas. Subject to the provisions of this Declaration and the applicable Plat or survey governing use and enjoyment thereof, such easements may be used by Declarant, its successors, the Owners, and any guests, tenants, and invitees residing upon or temporarily visiting the Property, for areas designated as walkways, vehicular access, parking, drainage and such other purposes reasonably necessary for use and enjoyment of any Lot in the Property. In addition to the foregoing, each Lot and is subject to an easement for encroachments created by construction, settlement, and overhangs as designed or constructed by the Declarant.

6.1.3 Use and Enjoyment. Declarant expressly reserves for the benefit of itself, the Association and for the Owners of the Property reciprocal, non-exclusive easements over all of the Common Areas for the use and enjoyment of said Common Areas subject to the provisions of the Governing Documents.

6.1.4 Maintenance and Repair. Declarant expressly reserves for the benefit of the Association and all agents, officers and employees of the Association nonexclusive easements over the Common Areas and Lots necessary to maintain and repair the Common Areas and to perform all other tasks in accordance with the provisions of this Declaration. There are specifically reserved for the benefit of the Owners easements for the utility services and the repair, replacement and maintenance of the same over all of the Common Areas, and to the extent necessary, over the Lots. Such easements shall be established and used so as not to unreasonably interfere with the use and enjoyment by the Owners of their Lots and the Common Areas. All such easements shall be appurtenant to and shall pass with the title to every Lot and conveyed.

6.1.5 Utility Easements. Various easements are reserved on the Property, as provided by individual Plats, other recorded instruments, applicable laws, ordinances and other governmental rules and regulations for utility installation and maintenance, including but not limited to, underground electric power, telephone, cable television, digital information, water, sewer, gas and drainage and accessory equipment, together with the right to enter upon any Lot at all times for said purposes. Within these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage, interfere with the installation and maintenance of utilities, that may change the direction of flow of drainage channels in the

easements, or that may obstruct or retard the flow of water through drainage channels in the easements. Each Owner hereby agrees not to place locks on structures enclosing utility meters or interfere with the access of utility representatives to said meters or easements. The easement area of each Lot, and all improvements thereon, shall be maintained continuously by the Owner of each Lot, except for those improvements for which a public authority, utility company or the Association is responsible. The Owner shall maintain the portion of any utility on the Owner's Lot, or within a private easement for the Owner's Lot that serves only the Owner's Lot to the point of connection to the portion of the system that serves more than one Lot. The Association shall have an easement for the maintenance, repair, replacement, and restoration of the portions of the easements that serve more than one Lot up to the point of connection to the public system.

6.1.6 Walkways and Driveways. There shall be no obstruction, including, but not limited to obstruction by basketball hoops or other similar sporting equipment, of any Streets, walkways, or driveways on or located within the Property which would interfere with the free circulation of foot, bicycle or automotive traffic, except such obstruction as may be reasonably required in connection with repairs of such Streets, walkways, and driveways. Use of all Streets, walkways, and driveways within the Property shall be subject to the reasonable rules and regulations adopted by the Association. The Association may, but shall not be obligated to, take such action as may be necessary to abate or enjoin any interference with or obstruction of Streets, walkways, and driveways, and shall have the right of entry to Lots for purposes of removing said interference or obstruction including towing of vehicles that are parked on Streets, driveways or walkways for extended periods or in violation of rules and regulations adopted by the Association or set forth in this Declaration. Any costs incurred by the Association in connection with such abatement, injunction, or corrective work shall be deemed to be a Special Assessment of the Owner or Sub Association responsible for the interference or obstruction. Free use of the Streets, walkways, and driveways and free circulation of foot, bicycle and vehicular traffic are essential elements of Declarant's plan for development of the Property.

6.1.7 Easements for Declarant's Obligations or Exercising Development Rights. Declarant hereby grants and conveys to itself an easement through the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Development Rights.

6.1.8 Landscaping Maintenance Easement. Declarant expressly reserves for the benefit of the Association and all agents, officers and employees of the Association nonexclusive easements over the Common Areas, Lots to perform maintenance of landscaping, including the trimming, watering and fertilization of all grass, ground cover, shrubs or trees, removal of dead or waste materials, or replacement of any dead or diseased grass, ground cover, shrubs or trees, and also including any yard maintenance. Notwithstanding the foregoing, each Owner shall be primarily responsible for maintaining the landscaping and yard areas on their respective Lot and, as provided in this Declaration, and as determined by a Sub Association's Governing Documents.

## **ARTICLE 7 - REPAIR AND MAINTENANCE**

7.1 **Repair and Maintenance Duties of the Association.** Following their initial installation, the Association shall maintain, repair, replace, resurface and make necessary

improvements to the Common Areas, or shall contract for such maintenance, repair, replacement, resurfacing, and improvements, to keep the Common Areas, including without limitation all Improvements thereon, in a good, sanitary, and attractive condition. Such maintenance, repairs, replacement, resurfacing, and improvements shall include, without limitation, maintenance and replacement of lighting, shrubs, trees, vegetation, irrigation systems (if any), Signs, play structures, benches, picnic facilities, playfields and appurtenances and any other improvements located on the Common Areas, repair of and payment for all centrally metered utilities, mechanical and electrical equipment in the Common Areas, to include care and upkeep of any median within the public street rights-of way, repair and maintenance of storm water facilities and equipment (to the extent such maintenance is not performed by the municipality or any utility service provider), and repair and maintenance of all parking areas, walks, and other means of ingress and egress within the Common Areas. All such maintenance, repairs and improvements to the Common Areas shall be paid for as a Common Expense. The Association shall pay all real and personal property taxes and Assessments which shall constitute a lien upon any portion of the Common Areas.

## **ARTICLE 8 - COMMON AREA PROTECTION**

8.1 **Association Control.** The Association shall own fee title to the Common Areas, except as expressly stated in this Declaration, or other Recorded document. The Association's appurtenant rights and duties with respect to the Common Areas shall include, without limitation, the following:

8.1.1 **Limits.** The right of the Association to reasonably limit the number of guests, patrons and invitees of Owners using the Common Areas.

8.1.2 **Rules.** The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Areas.

8.1.3 **Borrowings.** The right of the Association in accordance with the Articles, Bylaws and this Declaration, with a Majority Vote of the Owners, to borrow money for the purpose of maintaining and preserving the Common Areas, and in aid thereof to Mortgage any or all of its real or personal property as security for money borrowed or debts incurred, provided that the right of any such Mortgagee of the Association shall be subordinated to the rights of the Owners.

8.1.4 **Voting Rights.** The right of the Association to suspend the voting rights and right to use the Common Areas by an Owner' for any period during which any Assessment against the Owner's Lot remains unpaid and delinquent for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or rights to use the Common Areas shall be made only by the Board, after notice and an opportunity for a hearing, if any, as provided in the Bylaws.

8.2 **Reserved Rights.** Declarant shall have as a Development Right, the right to the nonexclusive use of the Common Areas without charge, for sales and marketing purposes, display, advertising, access, ingress, egress and exhibit purposes, which right Declarant hereby expressly reserves for itself and its sales agents and representatives.

8.3 **Easements for City and County Use.** In addition to the foregoing there shall be, and Declarant hereby reserves and covenants for itself and all future Owners within the Property, easements for public services and utilities, including without limitation, the right of the City of Florence, Lane County, or other recognized governmental entity or utility purveyors to install, maintain and repair public Streets, Street lights, curbs, gutters and sidewalks, sanity sewer, storm water facilities and water systems, and the right of the police and other emergency and public safety personnel to enter upon any part of the Common Areas for the purpose of enforcing the law.

8.4 **Waiver of Use.** No Owner or Sub Association may exempt themselves from personal liability for Assessments duly levied by the Association, nor release the Lot, or other property owned by them from the liens and charges hereof by waiver of the use and enjoyment of the Common Areas or by abandonment of a Lot, or any other property in the Property.

8.5 **Trash and Other Debris.** No trash, debris, waste, grass clippings, or hazardous waste shall be dumped, deposited, or placed in any Common Areas by any Sub Association, Owner or Occupant.

8.6 **Fires.** There shall be no fires permitted within the Common Areas except in designated barbeque pits or fire circles while attended and in full compliance with local laws and ordinances.

8.7 **Taxes.** Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain a separate real estate tax assessment of each Lot. If any such taxes or assessments may, in the opinion of the Association, nevertheless be a lien on the Common Areas, or any part thereof, they shall be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against the Common Areas and attributable to such Owner's Lot and interest in the Common Areas.

8.8 **Permissive Use.** Any Owner may permit an Occupant to use the Common Areas in the same manner as an Owner. All Owners shall be responsible for informing any Occupants of the contents of this Declaration and the rules regarding the Common Areas, and shall be responsible for requiring its Occupants to comply with this ARTICLE 8. No Owner, guest, Occupant, invitee, or licensee shall conduct or allow others to conduct any offensive or obnoxious activities within the Common Areas.

8.9 **Wetland and Habitat Conservation Covenants.** The Association and all Owners are subject to all provisions, restrictions, and conditions contained in any permit, approved mitigation plan, or separately recorded conservation covenant applicable to any wetland and habitat conservation areas on the Property as shown on any Plat of the Property.

## **ARTICLE 9 - ARCHITECTURAL CONTROL COMMITTEE**

9.1 **Committee.** Each Sub Association may establish an Architectural Control Committee in its Governing Documents. Declarant has the option of requesting the right to sit as a voting member of an Architectural Control Committee of any Sub Association.

9.2 **Design Guidelines.** Declarant reserves the right to apply Design Guidelines, created within its sole discretion, to Sub Associations and Property covered by this Association and any real property annexed into the Master Community. The Declarant may, at its sole discretion, require that all plans for construction on the Property subject to this Declaration shall be submitted to Declarant for review. The sole purpose for the review shall be to confirm compliance with the applicable Design Guidelines. The submission for review shall include: Exterior Elevations (all sides); Description of all exterior finish materials; Exterior color packages; and Interior floor plans with per floor and garage area specific square footages. Declarant reserves the right, in its sole discretion, to waive compliance with any specific Design Guidelines, provided said waiver shall be in writing and executed by Declarant.

## **ARTICLE 10 - SUB ASSOCIATIONS**

10.1 **Sub Association Requirements.** The Declarant has the Development Right to create and/or approve any Sub Associations and approve in writing and/or execute Sub Association's Governing Documents in its sole discretion during the Development Period and shall be a third party beneficiary to the enforcement rights contained therein. No declaration of covenants, conditions and/or restrictions as to any shall be valid unless the same has been approved in writing by Declarant.

10.2 **Sub Association Board.** Declarant has the option of requesting the right to sit as a voting member of the Board on any Sub Association.

## **ARTICLE 11 - DAMAGE OR LOSS TO IMPROVEMENTS**

11.1 **Restoration of Common Areas.** Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Areas or any other Improvements insured by the Association, the Association shall restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance shall be used for such purpose. The Board is authorized to have the necessary documents prepared and executed, and to take such other action so as to effect such reconstruction as promptly as practical. The Common Areas and all other Improvements shall be constructed or rebuilt substantially in accordance with the original construction plans available, if deemed practicable by the Board. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than the estimated cost of restoration and repair, a Reconstruction Assessment may be levied by the Board upon the Owners and their Lots in order to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose. Reconstruction Assessments shall be borne by the Owners in the same proportions as their Prorata Share of General Assessments. If, prior to the end of the Development Period, the Common Areas or Improvements thereon are destroyed and the insurance proceeds are less than the estimated cost of repair or reconstruction, the Declarant may elect not to restore or rebuild some or all of the Improvements or Common Areas or may elect to restore or rebuild only those for which the Declarant has received insurance proceeds sufficient to pay all costs associated therewith Reconstruction Assessments shall be approved and levied in the same manner as Capital Improvement Assessments as set forth in Section 4.3.



**11.2 Restoration Obligations of Owners.** In the event of the damage or destruction of any portion of a Lot or the Improvements thereon, it shall be the duty of the Owner of such Lot, as soon as may be practical, to repair or replace the damage or destruction or such portion thereof as will render such damage or destruction indiscernible from the exterior of the Lot. Any reconstruction, replacement or repair required by this Section shall be in accordance with the original plans and specifications of the Lot or plans and specifications approved by both any architectural control committee and the holders of any Mortgage of Record which encumber(s) the Lot.

**11.3 Condemnation.** In the event that all or any portion of the Common Areas shall be taken or condemned by any authority exercising the power of eminent domain, the condemnation award shall be used to restore the remaining Common Areas, and any balance shall be turned over to the Association. The Board shall have the exclusive right to prosecute any such proceedings; provided, however, that nothing contained herein to the contrary shall prevent an Owner from joining in the proceeding for purposes of claiming that the condemnation action has materially affected said Owner's property. The entire award shall be paid to the Association in trust for the benefit of the Owners. The Board shall distribute the portion of the award not used to restore the Common Areas to the Owners in proportion to their Prorata Share of General Assessments; provided, however, that if a Lot is encumbered by a Mortgage or Mortgages which has or have a provision relating to condemnation, then in-lieu-of distributing the award to the Owner of said Lot, the Board shall distribute the award directly to the Mortgagee of the Mortgage with the highest priority and seniority for distribution or payment in accordance with the terms and conditions of said Mortgagee's Mortgage.

## **ARTICLE 12 - PROTECTION OF MORTGAGEES**

**12.1 Mortgagee Provisions.** A breach of any of the provisions, covenants, restrictions or limitations hereof or the Recordation of any Association Lien or the pursuit of any remedy hereunder shall not defeat or render invalid the lien of any Mortgage of Record. The Owners and their Mortgagees may examine the books and records of the Association during all normal business hours, upon serving written notice of such examination on the Board. All of the provisions herein shall be binding upon and effective against any Owner whose title to said Lot is hereafter acquired through foreclosure or trustee's sale. The Mortgagee of any Mortgage of Record on any Lot may file with the Board a written request for written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration which is not cured within thirty (30) days, and the Board shall give notice thereof to each such Mortgagee. Each Institutional Lender which holds a Mortgage encumbering any Lot in the Property which obtains title to such Lot pursuant to the remedies provided in such Mortgage, by judicial or non-judicial foreclosure or by deed in lieu of foreclosure, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot unless the Assessments have priority under this Declaration.

## **ARTICLE 13 - DURATION AND AMENDMENT**

**13.1 Duration.** This Declaration shall continue in full force until fifty (50) years from the date hereof unless a Declaration of Termination or Declaration of Renewal is Recorded

meeting the requirements of an amendment to this Declaration as set forth in Section 13.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from the appurtenant Membership as long as this Declaration shall continue in full force and effect.

**13.2 Amendment.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. The amendment shall be adopted if approved by the vote, in person or by proxy, or written consent, of seventy-five percent (75%) or more of the Total Voting Power of the Association; provided, however, that until the Turnover Date no termination or other amendment shall be effective without the written approval of Declarant, in Declarant's sole discretion; and provided further, that no amendment to Section 16.2 below shall be made at any time without the written approval of Declarant, in Declarant's sole discretion while Declarant owns any Lot. A copy of each amendment which has been properly adopted shall be certified by at least two (2) officers of the Association and the amendment shall be effective when the Certificate of Amendment is Recorded. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by the record holders of one-hundred percent (100%) of the aggregate value of Mortgages encumbering the Property at the time of such amendment (provided that any Mortgage holder that fails to submit written notice of approval or disapproval of any such amendment within thirty (30) days of notice from the Association regarding such amendment shall be deemed to have consented to such amendment):

**13.2.1 Lien Rights.** Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to Mortgagees as provided in ARTICLE 12 or which seeks to modify Section 13.2 hereof.

**13.2.2 Assessments.** Any amendment which would necessitate a Mortgagee after it has acquired a Lot through foreclosure to pay more than its Prorata Share of any Assessments accruing after such foreclosure.

**13.2.3 Cancellation.** Any amendment which would or could result in a Mortgage being cancelled by forfeiture.

**13.2.4 Mortgagees.** Any amendment which would have a material, adverse effect on any Mortgagee.

**13.3 Amendments and Modifications by Declarant.** For so long as there is a Class C Member, Declarant acting alone shall have as a Development Right, the right to modify or amend this Declaration unilaterally without any other Owner approval. Within thirty (30) days after any such modification or amendment by Declarant, Declarant shall deliver a written notice of such modification or amendment to each Owner, which notice shall include a copy of the executed, acknowledged and recorded modification or amendment.

## **ARTICLE 14 - LIMITATION OF LIABILITY**

**14.1 Limitation of Liability.** So long as a member of the Board, or any of the Board's committees, Declarant or any agent of the foregoing has acted in good faith, without willful or

intentional misconduct, upon the basis of information possessed by such person, then that person shall not be personally liable to any Owner, the Association, or to any other person for any damage, loss, or claim on account of any, omission, error, or negligence of such person, except this article shall not apply to the extent such acts, omissions or errors are covered by the Association's insurance. In connection with all reviews, acceptances, inspections, permissions, consents or approvals required or permitted by or from either the Declarant, the Association or a committee under this Declaration, neither Declarant, the Association, nor a committee shall be liable to any Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against any Owner or such other person and arising out of or in any way relating to the subject matter of any such review, acceptance, inspection, permission, consent or approval, whether given, granted, withheld or denied.

## **ARTICLE 15 - INSURANCE; LOSSES.**

15.1 **Insurance.** The Board shall procure for the Association, and continuously maintain, as a Common Expense, one or more policies of insurance as follows: (a) insurance against property loss or damage by fire or other hazards covered by the standard extended coverage endorsement in an amount as near as practicable to the full insurable replacement value (without deduction for depreciation) of the Common Areas, or such other fire and casualty insurance as the Board determines will give substantially equal or greater- protection, (b) commercial general liability insurance for the use and ownership of the Common Areas, (c) worker's compensation insurance to the extent required by applicable law, (d) insurance against loss of personal property of the Association by fire, theft, and other losses with deductible provisions as the Association deems advisable, and (e) any other insurance the Board deems advisable. Such insurance policies shall meet the insurance and fidelity bond requirements for similar projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Authority, and Veterans Administration, so long as any of them is a Mortgagee or Owner, except to the extent such coverage is not available or has been waived by any of the foregoing. All policies shall include an endorsement providing coverage for Directors and Officers of the Association. Any deductible shall be a Common Expense of the Association.

15.2 **Casualty Losses.** In the event of substantial damage or destruction of any Common Area, all applicable insurance proceeds for such damage or destruction shall be paid to the Association for repair, replacement, or other disbursement as determined by the Board.

## **ARTICLE 16 - GENERAL PROVISIONS**

16.1 **Legal Proceedings.** Failure to comply with any of the terms of this Declaration, the Articles, the Bylaws, any supplemental Governing Documents, as amended or any regulations by an Owner or Occupant, their 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 lien, or any combination thereof, which relief may be sought by Declarant, the Association, the Board, or, if appropriate, by an aggrieved Owner. Failure to enforce any provision thereof shall not constitute a waiver of the right to enforce said provision, or any other provision thereof. The Association, the Board, any Owner (so long as such Owner is not at that time in default hereunder), or Declarant shall be entitled to bring an

action for damages against any defaulting Owner, and in addition may enjoin any violation of this Declaration by any Owner. Any judgment rendered in any action or proceeding pursuant thereto shall include a sum for attorneys' fees, including attorneys' fees incurred on appeal, in such amount as the Court may deem reasonable in favor of the prevailing party, as well as the amount of any delinquent payment, together with interest thereon at the rate established by the Board therefore from time to time, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

**16.2 Declarant Rights Provisions.** In addition to the right reserved to Declarant in this Declaration, no amendment to this Declaration shall be effective without the Declarant's prior written consent if the effect of the amendment would be to increase any obligation or liability of Declarant to the Owners, Occupants, Members, the Association, or the Board; or to lessen or decrease the Development Rights or any other rights of the Declarant under this Declaration; or revoke, reduce, amend or modify any waivers or releases given in favor of the Declarant under this Declaration.

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

**16.4 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of the Master Community and for the maintenance of the Common Areas, and any violation of this Declaration shall be deemed to be a nuisance. The article and section headings, titles and captions have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context otherwise requires, as used herein, the singular and the plural shall each include the other and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require.

**16.5 Construction and Sales by Declarant.** Nothing in this Declaration shall limit, and no Owner shall do anything which shall interfere with, the right of Declarant to reasonably subdivide or re-subdivide any portion of the Property owned by Declarant, or to complete any construction of Improvements on the Lots owned by Declarant and the Common Areas, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements on such Lots, and Common Areas as Declarant deems advisable prior to completion and sale of the last Lot owned by Declarant. Each Owner, by accepting a deed of a Lot, hereby acknowledges that the activities of Declarant may constitute a temporary inconvenience or nuisance to the Owners, but nonetheless shall be permitted. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Declarant's business or completing the work of disposing of the Lots by sale, lease or otherwise. Declarant may at any time use any Lots owned by Declarant as models or real estate sales or leasing and renting offices. This Declaration shall not limit the right of Declarant at any time prior to conveyance of title by deed to the last Lot owned by Declarant to establish on the Lots owned by Declarant and

the Common Areas additional easements, reservations and rights-of-way to itself, to utility companies, or to other Persons as may from time to time be reasonably necessary to the property development and disposal of the Lots owned by Declarant. Such easements may be created for the construction, installation, maintenance, removal, replacement, operation and use of utilities, including without limitation sewers, water and gas pipes and systems, drainage lines and systems, electric power and conduit lines and wiring, television, internet, telecommunication, and telephone conduits, lines and wires, and other utilities, public or private, beneath the ground surface (except vaults, vents, access structures and other facilities required to be above ground surface by good engineering practice), including the right to dedicate, grant or otherwise convey easements for rights-of-way to any public utility or governmental entity for such purposes. In the performance of any work in connection with such utilities, Declarant shall not unreasonably interfere with or disrupt the use of the Common Areas or the facilities located thereon and shall replace and restore the areas and facilities as nearly as possible to the condition in which they were prior to the performance of such work. All or any portion of the rights of Declarant hereunder, including but not limited to the Development Rights, may be assigned to any successor or successors to all or part of Declarant's respective interest in the Property, by an express written Recorded assignment or deed.

**16.6 Owner Liability and Duty.** Each Owner shall indemnify and hold harmless the Association for any injury to any person or damage to the Common Areas or any equipment thereon which may be sustained by reason of the negligence of said Owner or of his guests, employees, invitees or tenants. The damage and costs incurred by the Association as a result thereof shall become a Special Assessment against such Owner and his Lot, and shall be subject to levy, enforcement and collection in accordance with the Association Lien procedure provided for in this Declaration. The Association reserves the right to charge a Special Assessment to such Owner equal to the increase, if any, in the insurance premium directly attributable to the damage or injury caused by such Owner or by the use of the Lot of such Owner. The Association shall hold each Owner harmless from liability for loss or injuries that are covered by insurance then maintained by the Association.

**16.7 Association Waiver.** Notwithstanding anything herein to the contrary, to the extent that any Owner waives any claims against Declarant, or releases the Declarant from any claim with respect to a Lot, the Common Areas, the Improvements, and/or the Community, then the Association shall be deemed to have likewise released Declarant (and its officers, directors, shareholders, members, partners, employees, agents and representatives) from any claim with respect to such Lot, the Common Areas, the Improvements, and/or the Master Community on a Prorata basis applicable to each such Lot and .

**16.8 No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

**16.9 Indemnification.** Each officer of the Association, and each member of the Board or a committee, and any agents thereof, shall be indemnified by the Association against all expenses and liabilities (including attorneys' fees and costs) reasonably incurred by or imposed in connection with any litigation or other proceeding by reason of such individual holding a position or office, whether or not such person holds that position at the time the expense or

liability is incurred, except to the extent such expenses or liabilities are covered by insurance and except as specified in the Articles of Incorporation. However, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

**16.10 Access to Lots.** The Declarant, the Board, and the Association (and, as applicable, any of their officers, directors, shareholders, members, partners, employees, agents and representatives) may enter upon any Lot, which entry shall not be deemed a trespass, and take whatever steps are necessary to correct a violation of the provisions of this Declaration.

**16.11 No Third Party Rights.** This Declaration is made for the exclusive benefit of the Association, the Board, the Owners, the Members, any Sub Associations, the Declarant and their successors. This Declaration is not intended for the benefit of any other Person besides the Association, the Board, the Owners, the Members, any Sub Associations, the Declarant and their successors. No third party shall have any rights under this Declaration against any of the Association, the Board, the Owners, the Members, any Sub Associations, the Declarant and their successors.

**16.12 Notices.** Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more Co-Owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all Co-Owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Lot. Such notice shall be deemed delivered forty-eight (48) hours after the time of such mailing, except for notice of a meeting of Members or of the Board in which case the notice provisions of the Bylaws shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners. Any notice to be given to the Declarant may be delivered personally to Declarant, or sent by United States mail, postage prepaid, addressed to the Declarant at such address as shall be fixed from time to time and circulated to all Owners.

[Signature page follows]

The undersigned Owner of the Property and Declarant has caused this Declaration to be executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

DECLARANT:

**APIC FLORENCE HOLDINGS LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of APIC FLORENCE HOLDINGS LLC, to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2021.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
Appointment expires: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the County of Lane, State of Oregon, described as follows:

**INTERSECTION CONSTRUCTION, CONTRIBUTION  
AND CREDIT AGREEMENT**

**BETWEEN CITY OF FLORENCE**

**AND**

**APIC FLORENCE HOLDINGS, LLC**

## INTERSECTION CONSTRUCTION, CONTRIBUTION AND CREDIT AGREEMENT

THIS INTERSECTION CONSTRUCTION, CONTRIBUTION AND CREDIT AGREEMENT (“**Agreement**”) between the CITY OF FLORENCE, a municipal corporation organized and existing under the laws of the State of Oregon (“**City**”), and APIC FLORENCE HOLDINGS, LLC, an Oregon limited liability company, its successors and assigns (“**Developer**”), is made and entered into this \_\_\_\_ day of \_\_\_\_, 2021 (“**Effective Date**”). The City and Developer are the “Parties” to this Agreement.

### RECITALS

**A.** Developer is the developer of that certain real property comprising 9.4 acres more or less within the municipal boundaries of the City and legally described on Exhibit A attached hereto (“**Property**”).

**B.** On November 9, 2020, the City Council approved Resolution No. 28 Series 2020, affirming the Planning Commission Approval of Appealed Resolution PC 20 07 PUD 01/Resolution PC 20 08 SUB 01 with amended conditions (“**Approvals**”) authorizing the development of the planned community described therein (“**Master Community**”). The Master Community is a Class I planned community within the meaning of ORS 94.550(3).

**C.** The Master Community contains lots for the development of several different types of residential housing and multi-family buildings for which there is an unmet need in the City. There are 31 “Residential Housing Lots”, 49 “Townhome Lots”, and 2 “Apartment Lots” to accommodate 40 multi-family apartment units, and Common Areas, for a total of 120 dwelling units. The Maser Community may be developed in phases in accordance with the Approvals as finally approved.

**D.** Condition 11 of the Approvals require the Parties to enter into an agreement addressing the "construction of a southbound left-hand turn lane at the intersection of 35th Street and Rhododendron Drive (“**Intersection**”) and its intersection reconstruction (“**Intersection Improvements**”). Improvements would be funded in a combination of proportional SDC funding and/or credits with City participation and developer contribution.

**E.** Developer has submitted a Memorandum dated June 8, 2021 by Kittleson & Associates, Project #24714, which indicates that the Master Community will generate 216 weekday southbound left turns at the Intersection, and recommends a 9.5% proportionate share assessment of Intersection Improvement Costs (as defined in Section 2 below) to the Developer.

WHEREAS, in consideration of the mutual agreements of the Parties set forth herein, as well as other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

## AGREEMENTS

**1. BASIS OF AGREEMENT.** This Agreement establishes certain roles and responsibilities with respect to the Intersection Improvements in accordance with Condition 11 of the Approvals.

**2. INTERSECTION IMPROVEMENT CONSTRUCTION.** Subject to available funding and Section 3 below, the City shall design and construct the Intersection Improvements in accordance with applicable laws, including those related to the design, safety and construction, in a prudent and financially responsible fashion, at the City's sole cost and expense ("**Intersection Improvement Costs**"). The Intersection Improvement Costs shall be limited solely to the costs to design and construct the southbound left-hand turn lane at the intersection of 35th Street and Rhododendron Drive ("**Turn Lane**") and any reconstruction of the intersection made necessary by the construction of the Turn Lane. The City certifies that the Intersection Improvements constitute a "capital improvement" within the meaning of ORS 223.299(1)(D).

**3. DEVELOPER CONTRIBUTION.** Provided the City has commenced construction of the Intersection Improvements pursuant to construction contracts and a design finally approved by the City Council, Developer shall pay to the City up to 9.5% of the Intersection Improvement Costs, but in no event to exceed \$40,000 ("**Maximum Amount**") for the entire Master Community ("**Total Developer Contribution**"). The Total Developer Contribution shall be paid in percentage shares, each upon receipt of a permanent Certificate of Occupancy ("**CofO**") for any Phase of the Master Community (as Phase is defined and described in the Final PUD Permit), payable in the percentage equal to the number of units receiving a CofO divided by 120, but in no event to exceed 100% of the Total Developer Contribution. If the City has not then commenced construction of the Intersection Improvements as above provided, then Developer shall not be required to make any Total Developer Contribution, but shall be required to pay System Development Charges in full.

**4. SYSTEM DEVELOPMENT CHARGES & CREDITS.** All of the City's System Development Charges for each Phase of the Master Community as determined in the Final PUD shall be paid upon receipt of a CofO for such Phase; provided, however, the City shall grant developer a credit against such charges ("**SDC Credits**") in an amount equal to the dollar amount of the Total Developer Contribution to be paid at such time in accordance with Section 3 above.

**5. TERM.** The term of this Agreement shall begin on the Effective Date and continue for fifteen (15) years.

**6. GENERAL PROVISIONS.**

**a. Authority; Severability.** The City and Developer each represent and warrant it has the respective power and authority, and is duly authorized to execute, deliver and perform its obligations under this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into such agreements, and this Agreement shall be construed to reserve to the City with respect to the Intersection Improvements only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Developer and the City. If any provision of this Agreement

is determined to be unenforceable or invalid by a court of law, then (i) this Agreement shall thereafter be modified and/or further authorized to implement the intent of the Parties to the maximum extent allowable under law, (ii) the Parties agree to seek diligently to modify the Agreement consistent with the court decision, and (iii) neither party shall undertake any actions inconsistent with the intent of this Agreement until the modification to this Agreement has been completed.

**b. Amendment; Minor Modifications.** Any amendment to this Agreement must be approved by the City and Developer; provided, however, a designated City official may approve administrative minor modifications hereto, which administrative modifications shall not be deemed amendment to this Agreement. Administrative minor modifications mean those changes that do not materially alter the obligations or benefits of either part hereunder.

**c. Recording; No Third Party Beneficiary.** This Agreement or a memorandum thereof shall be recorded with the Lane County Recorder's Office. This Agreement is made and entered into for the sole protection and benefit of the Parties, their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

**d. Notices.** All communications, notices and demands of any kind which a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally (including delivery by professional courier services), (ii) sent by email transmission with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, to the addresses set forth with each signature. Notice by hand delivery or email shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered 48 hours after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

If to the City:

and to:

If to the Developer:

Ashlee Sorber  
General Counsel  
American Pacific International Capital, Inc.  
5 Thomas Mellon, Suite 305  
San Francisco, CA 94134  
email: asorber@apicincus.com

and to:

Davis Wright Tremaine  
Attn: Stephen Ledoux  
1300 SW 5th Avenue, Suite 2400  
Portland, OR 97201  
email: stephenledoux@dwt.com

**e. Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action with respect to this Agreement shall be brought in Lane County Circuit Court, Oregon.

**f. Multiple Originals.** This Agreement may be executed in two (2) or more facsimile or .pdf counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

**g. Headings; Recitals and Attachments.** The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement. The recitals to this Agreement and Exhibits A are incorporated in this Agreement by this reference as if fully set forth.

**h. Dispute Resolution.**

i. If any dispute arises out of any aspect of this Agreement, the Parties must first try in good faith to settle the dispute through mediation. This mediation must commence within 60 days after any party to the Agreement notifies the other party requesting mediation to resolve a dispute.

ii. If the Parties are not able to resolve their dispute through mediation, they agree to submit the matter for resolution through binding arbitration. The arbitrator shall be mutually chosen by both Parties. In no case may a mediator who has mediated a claim serve as the arbitrator on the same claim. If the Parties cannot agree on an arbitrator, either party or the Parties jointly may apply to the presiding judge of the Lane County Circuit Court to appoint an arbitrator. The arbitrator will consult with the Parties and establish the rules and procedures for the arbitration that, in light of the nature of the matter under dispute, will provide an efficient and fair means for each of the Parties to present its case. Among other things, the arbitrator will establish a schedule for completing the arbitration and issuing a decision. The decision of the arbitrator will be final and may be enforced by an action brought in Lane County Circuit Court. In such an action, the prevailing party is entitled to recover all costs and expenses, including all legal fees, incurred in that action.

iii. The Parties will bear the costs of retaining a mediator or an arbitrator equally.

IN WITNESS WHEREOF, this Agreement has been entered into by the City and Developer effective on the last date of signature below.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021

**CITY OF FLORENCE**

\_\_\_\_\_  
City Manager

Approved as to Form

\_\_\_\_\_  
City Attorney

**APIC FLORENCE HOLDINGS, LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_  
Wilson Chen, Its Manager



**EXHIBIT A**  
**LEGAL DESCRILPTION**