

## CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT ("Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between BORREGO INVESTORS, LLC., a California limited liability company, (the "Declarant"), and RAMS HILL COMMUNITY ASSOCIATION, a California non-profit mutual benefit corporation (the "Association").

### W I T N E S S E T H :

A. The Declarant is developing the remaining property within the planned residential development located in Borrego Springs, California, known as The Rams Hill Community (the "Rams Hill Community"). The Rams Hill Community began in 1983 and may be expanded by annexing parcels of real property into the Rams Hill Community. The Declarant may, pursuant to Section 3.2.1, submit such additional property to the First Restated and Amended Master Declaration of Covenants, Conditions, and Restrictions for The Rams Hill Community, recorded by the Declarant and the Owners in the public records of San Diego County, California (the "Master Declaration").

B. The Association was organized to operate and maintain the Rams Hill Community for the benefit of the Owners of Lots or Units in the Rams Hill Community. In addition, the Association was designed to own, operate, manage, and maintain the Rams Hill Common Areas and other properties and facilities located within the Rams Hill Community, to enforce the Master Declaration and the other governing documents referenced in the Master Declaration (the "Governing Documents"), and to perform various services and responsibilities described in and authorized by the Governing Documents.

C. The Master Declaration authorizes the Association to levy assessments on the Lots and Units subject to the Master Declaration and the owners thereof to cover the costs incurred and anticipated to be incurred by the Association in performing its responsibilities and exercising its authority under the Governing Documents ("Rams Hill Expenses"). The Declarant recognizes that during the Revived Development Period, as defined below, the annexation of additional property into the Rams Hill Community, the timing of completion of additional improvements to the Rams Hill Community and the Rams Hill Common Area, the eventual transfer of additional Rams Hill Common Area to the Association, and the maintenance of the Rams Hill Community will affect each Lot or Unit's pro rata share of the Rams Hill Expenses.

D. The Declarant recognizes that additional funds will be necessary to improve the Rams Hill Community and to address the maintenance and repair of the Rams Hill Community. However, recognizing that such assessment liability is difficult to estimate and such timing may not always be possible or practical, the Declarant desires to enter into an agreement with the Association to help fund certain Rams Hill Expenses related to the Rams Hill Community should the Regular Rams Hill Assessment at any time during the Revived Development Period, as defined herein, be insufficient to cover such Rams Hill Expenses without the necessity to increase the Regular Rams Hill Assessment by

more than five percent of the Rams Hill Regular Assessments for the Association's immediately preceding fiscal year.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE I** **DEFINITIONS**

The capitalized terms used in this Agreement shall be defined as set forth in the Master Declaration, or as set forth below. All other terms shall be given their normal, commonly understood meanings.

1.1. "Estimated Assessments" shall refer to the amount determined in accordance with Section 2.1 of this Agreement for any Fiscal Year.

1.2. "Fiscal Year" shall refer to the fiscal year of the Association, as established pursuant to the Association's By-Laws.

1.3. "Rams Hill Expenses" shall mean and refer to all costs and expenses incurred or anticipated to be incurred by the Association in carrying out its responsibilities and exercising its authority under the Governing Documents, including, without limitation, all fixed costs, operating costs, reasonable contributions to the Association's reserve accounts based upon the most recent reserve study, and administrative costs, except for the following:

(a) Any costs arising from damage, vandalism or destruction to the Rams Hill Common Area;

(b) Any costs for which Declarant elects in its sole discretion to assume direct payment responsibility pursuant to Section 2.3 of this Agreement;

(c) Any costs incurred or anticipated to be incurred by the Association for which a Single Benefit Rams Hill Assessment may be levied pursuant to Section 5.3.6 of the Master Declaration against less than all Units subject to assessment under Section 5.6.9 of the Master Declaration;

(d) Any costs incurred at the election of the Declarant for capital improvements to the Rams Hill Common Area; and

(e) Any costs or increase in contributions to the Association's reserve account arising out of compliance with statutory requirements under California law, which are not attributable to or based upon an election or discretion of the Declarant.

1.4. "Revived Development Period" shall refer to the period between the effective date of this Agreement and the first to occur of the following:

(a) the last day of the Fiscal Year in which 80% of all Lots in Rams Hill Community have been conveyed to retail buyers; or

(b) the 10th anniversary of the Effective Date of this Agreement, as defined in Section 3.2.

## **ARTICLE II**

### **SUBSIDY OBLIGATION**

2.1. Estimated Assessment. Pursuant to Section 5.5 of the Master Declaration, not less than 30 nor more than 90 days prior to the beginning of the Association's Fiscal Year, the Association shall estimate the total amount of the Rams Hill Expenses required to fund the Rams Hill Community Association's anticipated common expenses for the next succeeding Fiscal Year. Pursuant to Section 5.4.1 of the Master Declaration, the Rams Hill Expenses shall be allocated equally to each Lot or Unit within the Rams Hill Community as a Regular Rams Hill Assessment.

2.2. Developer's Obligation to Pay Subsidy. If the Estimated Assessment for any Fiscal Year during the Revived Development Period requires the Rams Hill Board to impose any assessment authorized under Section 5.3 of the Master Declaration including any Capital Improvement Rams Hill Assessment but excepting any Single Benefit Rams Hill Assessment, that is more than five percent (5%) greater than such assessment for the Association's immediately preceding Fiscal Year (such amount greater than 5% shall hereinafter be referred to as the "Overage Amount"), Declarant shall pay to the Association the Overage Amount for each Lot or Unit subject to the Master Declaration. The Declarant shall pay this amount to the Association on a monthly basis in twelve equal installments, or in accordance with the payment schedule for Rams Hill Assessments, if not on a monthly basis. Such payments shall be paid no later than 30 days after the due date.

In accordance with Section 1.3, any and all costs associated with the Declarant's election to make any capital improvement within Rams Hill and those costs associated with the Declarant's addition or construction of additional amenities within the Rams Hill Common Area shall not be assessed against owners within Rams Hill.

2.3. Election to Assume Association Expense. Declarant at any time may, in consideration for a reduction of its obligations to make subsidy payments hereunder, elect by written notice to the Rams Hill Board to assume responsibility for the direct payment of any particular Rams Hill Expense during the term of this Agreement. If Declarant elects to make such direct payment, and if at the end of the Fiscal Year during which such direct payment is made the actual revenues to the Association exceed the actual Rams Hill Expenses, after payment or transfer of the budgeted reserve allocation from the operating account to the reserve account of the Association, for such Fiscal Year,

the Association shall reimburse the Declarant for the amount of such direct payments up to the amount of such excess revenues. Such reimbursement shall be made within 30 days after the expiration of such Fiscal Year.

### **ARTICLE III**

#### **GENERAL PROVISIONS**

3.1. Amendments to Governing Documents. Notwithstanding any rights to the contrary under the Governing Documents, during the term of this Agreement neither the Association, the Rams Hill Board, nor the Owners shall amend or repeal the Governing Documents, directly or indirectly, or adopt, amend or repeal any rules, regulations or resolutions which would or may have the effect of increasing the obligations of the Declarant under this Agreement without the prior written consent of Declarant.

3.2. Term. The term of this Agreement ("Term") shall commence upon execution of this Agreement by both parties (the "Effective Date") and shall expire on the termination of the Revived Development Period, unless earlier terminated by an agreement signed by the Declarant and by the Association, upon approval of a majority of its Class "A" Members other than the Declarant, except that unless otherwise provided in any such agreement between the parties, the obligations of the parties pursuant to Sections 2.2 and 2.3 with respect to any Fiscal Year during the Term shall remain enforceable until fulfilled, notwithstanding expiration of the Term. The Declarant shall have no obligation to renew or extend the Term of this Agreement.

3.3. Assignment. The Association may not assign, transfer or hypothecate this Agreement or its rights hereunder without the prior written consent of the Declarant, and any attempt to do so shall be null and void. The Declarant may at any time assign and transfer all or a portion of its rights and obligations under this Agreement in the event of the sale or other transfer, in fee simple, of all or a substantial portion of the Declarant's unsold interest in the Rams Hill Community to another individual or entity, and upon such assumption the assignee shall assume the rights and obligations under this Agreement, and the Declarant shall be relieved of its obligations hereunder. A copy of the assignment shall be provided to the Association.

3.4. Binding Effect. Subject to the limitations upon assignments or other transfers set forth above, this Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns.

3.5. Notices. All notices, statements or other documents provided for hereunder shall be personally delivered or mailed by certified or registered U.S. mail, postage prepaid. Each such notice, statement or other document shall be conclusively presumed to have been given when personally delivered or, if mailed, upon the third business day following deposit in the U.S. mail. The addresses of the parties are:

DECLARANT: BORREGO INVESTORS, LLC.  
C/O THE WILES GROUP  
56-005 Village Drive  
La Quinta, California, 92253  
Attn: James Wanless

ASSOCIATION: RAMS HILL COMMUNITY ASSOCIATION  
c/o Professional HOA Consultants  
Attn: Ms. Kerin Morales  
1862 Rams Hill Dive  
P.O. Box 1928-1862  
Borrego Springs, CA 92004

Each party may change its address by written notice in accordance with this Section 3.5.

3.6. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

3.7. Amendments. This Agreement may not be amended or modified or otherwise supplemented, nor shall the Term be extended, except by a written instrument signed by both parties. The Association shall not consent to any amendment which would materially reduce the amount of the subsidy which the Declarant would otherwise be obligated to pay unless approved by a majority of the Class "A" votes in the Association other than the Declarant.

3.8. Indemnification. The Declarant shall indemnify, defend, and hold harmless, the Association and any Neighborhood Association, their respective boards and officers, with respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, and attorneys' fees and disbursements (including those incident to any settlement or appeal), that it shall incur or suffer, which arise from or relate to the construction, refurbishment, or repair to the common area or any improvements located thereon, within Rams Hill that is undertaken at the sole discretion of the Declarant.

3.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties in connection with the subject matter hereof, except as to that "Agreement Regarding Maintenance of Rams Hill Road" by and between the Rams Hill Community Association and DiGiorgio Corporation recorded on October 18, 1983 in the Official Records of San Diego County, California as Document No. 83-375322 and as specifically set forth herein. No waivers of any of the terms, covenants, or conditions provided under this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**DECLARANT: BORREGO INVESTORS, LLC**, a California limited liability company

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

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

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

[Corporate Seal]

Attest: \_\_\_\_\_

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

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

STATE OF CALIFORNIA )

) ss

COUNTY OF SAN DIEGO )

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her authorized capacity, and that by his or her signature on the instrument, the person or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires:

[Signatures Continued on Next Page]

**ASSOCIATION: THE RAMS HILL COMMUNITY ASSOCIATION**, a California non-profit mutual benefit corporation

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

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

Its: President

[Corporate Seal]

Attest: \_\_\_\_\_

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

Its: Secretary

STATE OF CALIFORNIA )

) ss

COUNTY OF SAN DIEGO )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument, the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)