

RECORDING REQUESTED BY AND RETURN TO:

HENRY S. AVELAR
1055 Imeson Road
McKinleyville, CA 95519

AVELAR SUBDIVISION
DECLARATION OF ROAD AND DRAINAGE MAINTENANCE ASSOCIATION

THIS DECLARATION is made by the undersigned (hereinafter collectively referred to as "Declarant") as record owners of real property in the County of Humboldt, State of California, which is more particularly described as Lots 1 through 13, as filed in Book _____ of Maps, Page(s) _____, Humboldt County Recorder's Office, incorporated and made a part hereof (the "Properties") for the purpose of creating a Common Road and Drainage Facility Easement and to establish a Property Owners Association that will maintain and upgrade the private road and drainage facilities, and in such regard, Declarant hereby declares that all the Properties shall be held, sold, and conveyed, subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

- (1) The term "Association", as used herein, shall mean and refer to the AVELAR SUBDIVISION ASSOCIATION, a non-profit association, and its successors and assigns.
- (2) The term "Owner", as used herein, shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any part of the Properties, or a buyer under a contract of sale, but excluding those having such interest merely as security for the performance of an obligation.
- (3) The term the "Properties", as used herein, shall mean and refer to the real property described above and such contiguous additions thereto as may hereafter be brought within the jurisdiction of the Association.
- (4) The term "Covenants", as used herein, shall refer collectively to the covenants, conditions, restrictions, reservations, easements, liens, and charges imposed by or expressed in this Declaration.
- (5) The term "Landscaping", as used herein, shall refer to the landscape strip between the sidewalk and the street along the frontage of each lot.

(6) The term "Common Road and Storm Drain Facilities Easement", as used herein, shall mean the easement(s) and right of way(s) shown on the Avelar Subdivision, Tract No. _____ filed in Book _____ of Maps, Pages _____, Humboldt County Recorder's Office, listed in the table below. The easement(s) and right of way(s) covers Avelar Court and Imeson Road (the applicable portion of which that extends along the south side of the property).

Easement & Right of Way	Properties benefiting	Proportional Responsibility
Avelar Court	Lots 1 - 13	1/13 per lot
Imeson Road	Lots 1 - 13	1/13 per lot
All Storm Drain Facilities on Avelar Court & Imeson Road	Lots 1 - 13	1/13 per lot

Note: All Avelar Subdivision "Landscaping" is not part of this Road Maintenance Association at this time as they are the responsibility of the individual owner's properties which front these areas per the subdivision's Covenants, Conditions, and Restrictions.

ARTICLE II
COMMON ROAD AND STORM DRAIN FACILITIES EASEMENT

There is hereby created and established an easement over the Properties as described above. The easement shall be for the purpose of ingress and egress and the installation, maintenance, and repair of a roadway and storm drain facilities. The easement shall be solely for the benefit of all present and future Owners of all or any portion of the Properties, including holders of security interests. The easement shall be mutual, reciprocal, and interdependent between all of the present and future Owners of all or a portion of the Properties.

The easement created is for the benefit of the Owners and this Declaration is not intended to constitute a declaration or offer for public use, but rather is intended for the private use of the Owners described herein. The easement created shall inure to the benefit of and shall be binding upon the successors in title to any or all of the Properties and the easement created herein shall be appurtenant to all or any portion of the property described herein.

ARTICLE III
MANAGEMENT

(1) All powers relating to management, operation, and maintenance of the Common Road and Storm Drain Facilities Easement, as well as certain rights, duties, and powers relating to the remainder of the Properties, shall be vested in the Association. The Association may, from time to time, adopt rules and regulations concerning the Properties in conformance with the general purposes for the establishment of these Covenants.

(2) Every person who acquires title, legal or equitable, to any of the Properties shall become a member of the Association; provided, however, that such membership is not intended to apply

to those persons who hold an interest in any such lot merely as security for the performance of an obligation. Each person who becomes a member of the Association shall pay an initial transfer and initiation fee of \$0 (no fee) for each separate parcel of the Properties acquired by that person. Owners shall be entitled to vote for each lot and/or parcel of the Properties in which they hold an interest, so long as such Owner is not then delinquent in the payment of any dues or other assessment of the Association. When more than one person holds such interest in any lot, all such persons shall be members of the Association. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot of the Properties.

Lots	Votes
Lots 1 – 13	1 vote per lot for maintenance of Avelar Court
Lots 1 – 13	1 vote per lot for maintenance of Imeson Road
<u>Storm Drain Facilities:</u> Lots 1 – 13	1 vote per lot for maintenance of All Storm Drain Facilities

(3) The Association may employ or engage a manager and other employees or agents and contract for such services, labor, and materials as it may deem reasonably necessary to operate and maintain the Common Road and Storm Drain Facilities Easement and other areas which the Association may acquire and to discharge its other duties as herein provided. The storm basin and drainage swale fronting Imeson Road will be maintained as part of an Open Space Maintenance Zone agreement with McKinleyville Community Services District (MCSD).

(4) The Association shall be responsible for the maintenance, repair, and upkeep of the Common Road and Storm Drain Facilities Easement located within the Properties. The Association shall also be the means for the promulgation and enforcement of all regulations necessary to the governing of the use and enjoyment of such Common Road and Drainage. The Association may maintain adequate liability insurance on the Common Road and Drainage Facilities Easement as necessary to protect the interest of the Owners.

(5) The Declarant and such subsequent Owner of any parcel of the Properties by acceptance of a deed or contract therefore, whether or not it shall be so expressed in such deed or contract therefore, whether or not covenant and agree to pay to the Association such annual assessments or charges (hereinafter called the maintenance and upgrade fund payments) and such special assessments for capital improvements, such assessments to be established and collected as provided herein, except that all assessments shall be prorated among the Owners in the same manner that votes are allocated [per Article III(2)]. As an initial maintenance and upgrade fund payment, each Owner covenants and agrees to pay the annual payments as specified on the following page, per lot, of the Properties owned. Payments shall be due on the tenth (10th) day of December of each year, starting in the year 2024.

Avelar Subdivision Annual Payments Table

Subdivision Lots	"Avelar Court"	"Imeson Road"	"Storm Drain Facilities"	Annual payment
Lots 1 – 13	\$80	\$70	\$90	\$240*z

Notes and Definitions for the above Annual Payments Table

"Avelar Court", "Imeson Road", and Storm Drain Facilities" includes road maintenance of Avelar Court, Imeson Road, along with storm drain inlets and piping within Avelar Subdivision. If, at some point, maintenance of some or all these facilities are assumed by the County of Humboldt in a Permanent Road Division, costs will be assumed by the County and will be suspended from this Maintenance Association. The storm basin and drainage swale fronting Imeson Road will be maintained as part of an Open Space Maintenance Zone agreement with McKinleyville Community Services District (MCSD).

"z" is an inflation factor. This inflation factor shall be based on the Consumer Price Index (hereinafter called CPI), compounded annually on June 1 of each year. For the purposes of this calculation, the CPI shall be that prepared by the United States Department of Labor, Bureau of Labor and Statistics, average of all Consumer Price Indexes for All Urban Consumers in the State of California. Assistance with determining this inflation factor is available from the Humboldt County Department of Public Works, Land Use Division, telephone number 707-445-7205.

All or portions of the costs outlined in the above table may be suspended with the approval of the County of Humboldt or its successor or assigns, so long as the maintenance responsibilities of the Association are assumed by a public agency such as the County of Humboldt.

ARTICLE IV
GENERAL PROVISIONS

Enforcement. Any subdivider, or subdividers, or Owner or Owners shall have the right to enforce this agreement by any proceeding at law or in equity. The prevailing party shall be entitled to reasonable attorney's fees. Failure to enforce any condition, covenant, or restriction contained in this agreement shall not be deemed a waiver of the right to do so thereafter.

ARTICLE V
AMENDMENTS

The provisions of this Declaration may be amended from time to time upon a majority vote of the Owners entitled to vote.

ARTICLE VI
ACTIVITIES OF ASSOCIATION

(1) The Association shall be formed and shall exist only for the convenience of the Owners to assist with the maintenance and upgrading of the Properties and to carry out the general purposes of the Owners. The Association shall not engage in any business or profit-making activities, but shall exist only as an arrangement for the protection of the property interests of the members.

(2) The sole income of the Association shall be derived from assessments received from individual members.

(3) The Association may do any and all other acts and things that a non-profit Association is empowered to do, which may be necessary, convenient, or desirable in the administration of its affairs for the specific and primary purposes and meet its duties as herein set forth. Nothing herein contained shall be construed to give the Association authority to conduct a business for profit on behalf of all of the Owners or any of them, or at all.

(4) The Association shall be governed by a three (3) man Board of Directors to be selected annually on or before the first Monday in March from among the Owners. Any vacancy among the Board of Directors may be filled by appointment by the Board of Directors. The Directors shall be elected and may be removed by a majority of the votes cast by the Owners. Each Director shall be elected for a term of one (1) year, but shall continue to serve until his successor is selected. The Board of Directors shall have the power to manage the affairs of the Association and make any assessment, or increase or decrease any dues or maintenance payment after the initial year, provided that there shall be no increase of more than twenty percent (20%) in any one (1) year without the approval of majority of the Owners.

(5) The Directors shall meet at least every two years at such places and times as the Board elects. A quorum at any such meeting shall require a majority of the Directors. On all matters requiring a vote by the Directors, a majority vote of the Directors present at the meeting shall control. Written (or email / text) notice of all meetings of the Directors shall be given each Director at least five (5) days in advance, provided, however, any Director may waive the necessity of notice.

(6) All matters requiring an Association vote shall be determined by a majority vote of those present or represented by proxy. Such vote may either be in writing or by a majority of those present at any meeting of the Association, called by the Board of Directors or any Owner, providing at least fifteen (15) days prior written (or email / text) notice has been given to all Owners who have registered their addresses with the Association. A majority of the Owners must be present or represented by proxy to constitute a quorum.

ARTICLE VII TERMINABILITY

(1) It is contemplated by the Association that the road will be periodically improved and upgraded until constructed to the standards necessary to permit the road to be admitted into the Humboldt County Maintained Road System.

(2) This Association cannot dissolve without the approval of the Humboldt County Planning Commission.

ARTICLE VIII
SEVERABILITY

Should any of the covenants contained in this Declaration be void or become unenforceable in law or in equity, the remaining portions of this Declaration shall nevertheless be and remain in full force and effect.

ARTICLE IX
ANNEXATION

Additional land area may be annexed to the Properties with the consent of a majority of Owners entitled to vote.

IN WITNESS WHEREOF, this instrument is executed this 31st day of August, 2022.

NOTE: ALL OWNERS SIGNATURES MUST BE NOTARIZED

Henry S Avelar
HENRY S. AVELAR, TRUSTEE
HENRY S. AVELAR FAMILY TRUST

NOTARY ACKNOWLEDGMENT

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

State of California

County of Humboldt

On August 31, 2022 before me, Chelsea Smith, Notary Public, personally appeared Henry S Avelar, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Handwritten Signature]

