

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

City Clerk
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

APN:

SPACE ABOVE FOR RECORDER'S USE ONLY
City Document No.

**CITY OF OCEANSIDE
DEFERRED IMPROVEMENT AGREEMENT**

(Project File No:)

THIS AGREEMENT is made and entered into this _____
day of _____, 20_____, by and between the CITY OF OCEANSIDE,
a municipal corporation, hereinafter designated as "CITY", and _____,
hereinafter designated as "PROPERTY OWNER".

RECITALS

A. The CITY OF OCEANSIDE has conditionally approved a Parcel Map, hereinafter referred to as "THE MAP", for the development project described as _____, and such map was filed as Map Number _____ in the Office of the County Recorder of San Diego County on _____ as File No. _____.

B. In conjunction with the approval of the aforementioned Parcel Map, PROPERTY OWNER is required and has agreed to complete the improvements required by the conditions of approval and/or designated on THE MAP.

C. Pursuant to Government Code Section 66411.1, the PROPERTY OWNER has requested that construction of certain improvements be deferred until such time that a permit or other development approval for the parcel is issued by the CITY.

D. The CITY has determined it to be in the public interest to agree to postpone the construction of said improvements.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Construction of the following improvements may be deferred:

- A) Until such time that a permit or other development approval for such parcel is issued by the CITY; or
- B) Until such time that the CITY, in its sole discretion, determines that fulfillment of the construction requirements is necessary for either of the following reasons:
 - 1) The public health and safety; or
 - 2) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

2. If the requirement to construct the improvements is triggered by option A, then upon the CITY's issuance of a permit or other development approval, the PROPERTY OWNER shall commence and complete construction of the above-listed improvements prior to or in conjunction with any implementation of said permit or development approval. Failure to complete the improvements to the satisfaction of the City Engineer shall constitute grounds for revocation of the permit or development approval, and shall constitute a breach of this agreement.

3. If the requirement to construct the improvements is triggered by option B, then CITY shall notify the PROPERTY OWNER in writing at the address listed in #14 below. Upon receipt of such notice, PROPERTY OWNER agrees to cause construction of said improvements in accordance with a schedule approved by the CITY. Within thirty (30) days of receipt of such notice, the PROPERTY OWNER shall submit a proposed construction schedule for the CITY's review. Failure to submit a construction schedule within thirty (30) days after receipt of notice or failure to complete the improvements in accordance with the approved construction schedule shall constitute a default by the PROPERTY OWNER. PROPERTY OWNER shall submit all requests for extensions of time for performance in writing to the City Engineer prior to the date on which performance is due. The City Engineer may grant reasonable time extensions for unforeseeable delays, which are beyond PROPERTY OWNER's control.

4. All costs associated with construction of the improvements shall be borne by PROPERTY OWNER.

5. In the event that the PROPERTY OWNER has entered into a secured agreement for completion of the improvements to be deferred, this agreement shall serve to modify only those terms of the agreement, which establish deadlines for the completion of the designated improvements. Unless expressly stated, all other terms and obligations of any such secured agreement shall remain in full force and effect. Any and all securities posted to secure completion of said improvements shall remain in full force and effect for the duration of this agreement.

6. This agreement shall be recorded with the County Recorder of San Diego County at the sole expense of PROPERTY OWNER and shall constitute notice to all successors and assigns of PROPERTY OWNER or title to the real property of the obligations set forth in this agreement.

7. In the event of a default by PROPERTY OWNER, the CITY is authorized to cause construction of the improvements and charge the costs to the PROPERTY OWNER. Additionally, any costs incurred by the CITY as a result of PROPERTY OWNER's default shall constitute a lien against the property.

8. PROPERTY OWNER shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the PROPERTY OWNER or its employees, agents, subcontractors, or others in

connection with the execution of the work covered by this Agreement, except only for those claims arising from the sole negligence or willful misconduct of the CITY, its officers, agents, or employees. PROPERTY OWNER's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, PROPERTY OWNER at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees. In the event of litigation occasioned by any default of the PROPERTY OWNER, the PROPERTY OWNER shall agree to pay all costs involved, including reasonable attorney's fees.

9. The term "PROPERTY OWNER" shall include, respectively, not only the present owner of the real property but also heirs, successors, executors, administrators and assigns thereof, it being the intent of the parties that the obligations undertaken shall run with the real property.

10. This Agreement shall not relieve the PROPERTY OWNER from any other specific requirements of the Subdivision Map Act, the Subdivision Ordinance, or any federal, state, or local laws. The construction of deferred improvements shall conform to all applicable laws, rules, and regulations in effect at the time of construction.

11. CITY and PROPERTY OWNER expressly intend and agree that this agreement is for the deferral of improvements only, and shall in no manner be construed to constitute development approval.

12. This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

13. This Agreement comprises the entire integrated understanding between CITY and PROPERTY OWNER concerning the deferral of improvements work to be performed and supersedes all prior negotiations, representations, or agreements.

14. NOTICES. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:

TO PROPERTY OWNER:

Either party may change its address by giving notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

15. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PROPERTY OWNER and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this agreement to be executed by setting hereunto their signatures this _____ day of _____, 20.

PROPERTY OWNER

CITY OF OCEANSIDE

By: _____
Signature

By: _____
City Engineer

Print Name: _____

Approved as to Form:

Print Title:

By: _____
Signature

City Attorney

Print Name: _____

Print Title:

NOTARY ACKNOWLEDGEMENTS OF PROPERTY OWNER MUST BE ATTACHED.