

RECORDING REQUESTED BY:
CITY OF OCEANSIDE

WHEN RECORDED PLEASE MAIL TO:

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

PRIVATE ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT for the maintenance and repair of that certain private road easement, the legal description and/or plat of which is set forth in Exhibit A attached hereto and made a part hereof, is entered into between (Name of Developer, Company Name, LLC) (hereinafter referred to as "DEVELOPER") and the City of Oceanside (hereinafter referred to as "CITY") for the benefit of future subdivision lot owners who will use the private road easement (hereinafter referred to as "LOT OWNERS"), which shall include the DEVELOPER to the extent the DEVELOPER retains any ownership interest in any lot or lots.

WHEREAS, this Agreement is required as a condition of approval by the CITY; and

WHEREAS, DEVELOPER is the owner of certain real property being subdivided and developed as a subdivision that will use and enjoy the benefit of said road easement. A complete legal description of said real property is attached, labeled Exhibit B, and incorporated by reference. Said real property is hereinafter referred to as the PROPERTY; and,

WHEREAS, it is the mutual desire of parties hereto that said private road easement be maintained in a safe and usable condition by the LOT OWNERS; and,

WHEREAS, it is the mutual desire of the parties hereto to establish a method for the maintenance and repair of said private road easement and for the apportionment of the expense of such maintenance and repair among existing and future LOT OWNERS; and,

WHEREAS, the CITY shall be deemed a party hereto with the right but not the obligation to enforce full compliance with the terms and conditions of the Agreement; and,

WHEREAS, it is the mutual intention of the parties that this Agreement constitute a covenant running with the land, binding upon each successive LOT OWNER of all or any portion of the property, NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The property is benefited by this Agreement, and present and successive LOT OWNERS of all or any portion of the property are expressly bound hereby for the benefit of the land.
2. The cost and expense of maintaining the private road easement shall be divided equally among the subdivided parcels created in the subdivision and paid by the LOT OWNERS or the heirs, assigns and successors in interest of each such owner.

3. In the event any of the herein described parcels of land are subdivided further, the LOT OWNERS, heirs, assigns or successors in interest of each such newly created parcel shall be liable under this Agreement for their then pro rata share of expenses and such pro rata shares of expenses shall be computed to reflect such newly created parcels.
4. The repairs and maintenance to be performed under this Agreement shall be limited to the following, unless the consent for additional work is agreed to by a majority vote of the LOT OWNERS owning 100% of the number of parcels, including subdivisions thereof as described in paragraph 3 above. Reasonable and normal road improvement and maintenance work to adequately maintain said private road easement and related drainage facilities to permit all weather access.
5. Repairs and maintenance under this Agreement shall include, but are not limited to, filling of chuckholes, repairing cracks, repairing and resurfacing of roadbeds, repairing and maintaining drainage structures, removing debris, maintaining signs, markers, striping and lighting, if any, and other work reasonably necessary or proper to repair and preserve the easement for all weather road purposes.
6. Any extraordinary repair required to correct damage to said road easement that results from action taken or contracted for by parties hereto or their successors in interest shall be paid for by the party taking action or party contracting for work which caused the necessity for the extraordinary repair. The repair shall be such as to restore the road easement to the condition existing prior to said damage.
7. It is agreed that DEVELOPER is initially the agent to contract and oversee and do all acts necessary to accomplish the repairs and maintenance required and/or authorized under this Agreement. The parties further agree that the agent may at any time be replaced at the direction of a majority of the LOT OWNERS. Repair and maintenance work on the private road easement shall be commenced when a majority of the LOT OWNERS agree in writing that such work is needed. The agent shall obtain three bids from licensed contractors and shall accept the lowest of said three bids and shall then initiate the work. The agent shall be paid for all costs incurred, including a reasonable compensation for the agent's services, and such costs shall be added to and paid as a part of the repair and maintenance cost; provided, however, that compensation for the agent's services shall in no event exceed an amount equivalent to 10% of the actual cost of repairs and maintenance performed. In performing his duties, the agent, as he anticipates the need for funds, shall notify the parties and each party shall within forty-five (45) days pay the agent, who shall maintain a trustee account and also maintain accurate accounting records which are to be available for inspection by any party or authorized agent upon reasonable request. All such records shall be retained by the agent for a period of five years.

8. Should any LOT OWNER fail to pay the pro rata share of costs and expenses a provided in this Agreement, then the agent or any LOT OWNER or OWNERS shall be entitled without further notice to institute legal action for the collection of funds advanced on behalf of such LOT OWNER in accordance with the provision of California Civil Code Section 845, and shall be entitled to recover in such action in addition to the funds advanced, interest thereon at the current prime rate of interest, until paid, all costs and disbursements of such action, including such sum or sums as the Court may fix as and for a reasonable attorney's fee.
9. Any liability of the LOT OWNERS for personal injury to the agent hereunder, or to any worker employed to make repairs or provide maintenance under this Agreement, or to third persons, as well as any liability of the LOT OWNERS for damage to the property of agent, or any such worker, or of any third persons, as a result of or arising out of repairs and maintenance under this Agreement, shall be borne, as between the LOT OWNERS in the same percentages as they bear the costs and expenses of such repairs and maintenance. Each LOT OWNER shall be responsible for and maintain his own insurance, if any. By this Agreement, the parties do not intend to provide for the sharing of liability with respect to personal injury or property damage other than that attributable to the repairs and maintenance undertaken under this Agreement. Each of the LOT OWNERS agrees to indemnify the others from any and all liability for injury to him or damage to his property when such injury or damage results from, arises out of, or is attributable to any maintenance or repairs undertaken pursuant to the Agreement.
10. LOT OWNERS shall jointly and severally defend and indemnify and hold harmless the CITY, the CITY Engineer and their consultants and each of their officials, directors, officers, agents and employees from and against all liability, claims, damages, losses, expenses, personal injury and other costs, including costs of defense and attorney's fees, to the agent hereunder, or to any LOT OWNER, any contractor, any subcontractor, any user of the road easement, or to any other third persons arising out of or in any way related to the use of, repair, or maintenance of, or the failure to repair or maintain the private road easement.

Nothing in the Agreement, the specifications or other contract documents or CITY approval of the plans and specifications or inspection of the work is intended to include a review, inspection, acknowledgment of a responsibility for any such matter, and CITY, CITY'S Engineer, and their consultants, and each of their officials, directors, officers, employees and agents, shall have absolutely no responsibility or liability therefore.

11. If in the CITY'S sole judgment said private road easement is not being maintained to standards set forth in paragraph 4 of this Agreement, the CITY may thereupon provide written notice to all LOT OWNERS to initiate repairs or construction within ninety (90) days. Upon failure to demonstrate good faith to make repairs or construction within ninety (90) days, the LOT OWNERS agree that the CITY may make all needed repairs to said road easement and/or construct said road easement to meet the standards set forth in paragraph 4 and to then assess costs to all LOT OWNERS proportionately. Any costs incurred by the CITY as a result of the LOT OWNERS' failure to make repairs or construction in accordance with the above shall constitute a lien against the Property. This

12. If the CITY elects to make necessary repairs in accordance with paragraph 11 above, said work shall be without warranty. Said repair shall be accepted "as is" by the LOT OWNERS without any warranty of workmanship and be guaranteed and indemnified by them in accordance with paragraph 9.
13. The foregoing covenants shall run with the land and shall be deemed to be for the benefit of the land of each of the LOT OWNERS and each and every person who shall at anytime own all or any portion of the property referred to herein.
14. It is understood and agreed that the covenants herein contained shall be binding on the heirs, executors, administrators, successors, and assigns of each of the LOT OWNERS.
15. It is the purpose of the signators hereto that this instrument be recorded to the end and intent that the obligation hereby created shall be and constitute a covenant running with the land and any subsequent Purchaser of all or any portion thereof, by acceptance of delivery of a deed and/or conveyance regardless of form, shall be deemed to have consented to and become bound by these presents, including without limitation, the right of any person entitled to enforce the terms of this Agreement to institute legal action as provide in paragraph 8 hereof, such remedy to be cumulative and in addition to other remedies provided in this Agreement and to all other remedies at law or in equity.
16. The terms of this Agreement may be amended in writing upon majority approval of the LOT OWNERS and consent of the CITY.
17. This Agreement shall be governed by the laws of the State of California. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity, and enforceability of the remaining provisions shall not be affected thereby.
18. If the property constitutes a "Common Interest Development" as defined in California Civil Code Section 1351(c) which will include membership in or ownership of an "Association" as defined in California Civil Code Section 1351(a), anything in this Agreement to the contrary notwithstanding, the following provisions shall apply at and during such time as (i) the Property is encumbered by a "Declaration" (as defined in California Civil Code Section 1351(h), and (ii) the Common Area of the property (including the private road easement) is managed and controlled by an Association:
 - a. The Association, through its Board of Directors, shall repair and maintain the private road easement and shall be deemed the "agent" as referred to in Paragraph 7 above. The Association, which shall not be replaced except by amendment to the Declaration, shall receive no compensation for performing such duties. The costs of such maintenance and repair shall be assessed against each owner and his subdivision interest in the Property pursuant to the Declaration. The assessments shall be deposed in the Associations' corporate account.

- b. The provisions in the Declaration which provide for assessment liens in favor of the Association and enforcement thereof shall supersede Paragraph 8 of this Agreement in its entirety. No individual owner shall have the right to alter, maintain or repair any of the Common Area (as defined in California Civil Code Section 1351(b) in the Property except as may be allowed by the Declaration.
- c. This Agreement shall not be interpreted in any manner which reduces or limits the Association's rights and duties pursuant to its Bylaws and the Declaration.

Owner Print Name

Owner Print Name

Signature

Signature

Owner Print Name

Signature

NOTE: MUST ATTACH NOTARY ACKNOWLEDGEMENTS FOR ALL SIGNATURES

CITY OF OCEANSIDE

BY: _____
City Engineer

APPROVED AS TO FORM:

BY: _____
City Attorney

Attachment: Exhibit A
 Exhibit B