RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF OCEANSIDE
OFFICE OF THE CITY CLERK
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

_____

Above Space for Recorder's Use

STORMWATER FACILITIES MAINTENANCE AGREEMENT WITH ACCESS RIGHTS AND COVENANTS

(_____Insert Project Reference Numbers_____)

This AGREEMENT for the maintenance and repair of certain Stormwater Management Facilities is entered into between _____ (hereinafter referred to as "OWNER") and the City of Oceanside (hereinafter referred to as "CITY") for the benefit of the CITY, the OWNER, the successors in interest to the CITY or the OWNER, and the public generally.

RECITALS

A. OWNER is the owner of certain real property located in the City of Oceanside, California, more particularly described in Exhibit "A" attached hereto and made a part of (hereinafter referred to as the "PROPERTY"), and has proposed that the PROPERTY be developed as ____(insert brief description of type of project, e.g., "a 100 unit residential subdivision")_____ in accordance with applications for Tentative Map No. _____, Development Plan No. _____, Conditional Use Permit No. _____, Grading Plan (Permit) No. _____ _____which are on file with the CITY. This Agreement is required as a condition of approval for such development as set forth in Resolution No. _____ _____.

B. In accordance with the City of Oceanside's Urban Runoff Regulations, Oceanside City Code, Chapter 40 (the "Stormwater Ordinance"), the City of Oceanside Subdivision Ordinance, the City of Oceanside Zoning Ordinance, The City of Oceanside Grading Ordinance and/or other ordinances or regulations of CITY which regulate land development and urban runoff, OWNER has prepared and submitted to CITY, a Stormwater Mitigation Plan (hereinafter referred to as SWMP), which is on file at the CITY. The SWMP proposes that stormwater runoff from the PROPERTY be managed by the use of Storm water Management Facilities which are identified in the SWMP as "Best Management Practices" or "BMP's".

The precise location(s) and extent of the post construction BMP's are indicated on the approved SWMP dated (insert approval date). The SWMP specifies the manner and standards by which the BMP's must be repaired and maintained in order to retain their effectiveness, as set forth in the Operation Maintenance Plan (hereinafter referred to as "O&M PLAN"). The approved SWMP and O&M PLAN containing any revisions thereto are on file with the CITY.

C. The information contained in the SWMP and OWNER's representations that the BMP's will be maintained pursuant to the SWMP have been relied upon by CITY in approving OWNER's development applications. It is the purpose of this Agreement to assure that the BMP's are maintained, by creating obligations which are enforceable against the OWNER and the OWNER's successors in interest in the PROPERTY. It is intended that these obligations be enforceable notwithstanding other provisions related to BMP maintenance which are provided by law.

AGREEMENT

NOW, THEREFORE, for consideration of (a) CITY's approval of the above development applications and (b) the mutual covenants set forth herein, IT IS HEREBY AGREED AS FOLLOWS:

1. **Maintenance of Stormwater Management Facilities.** OWNER agrees, for itself and its successors in interest, to all or any portion of the PROPERTY, to comply in all respects with the requirements of the Stormwater Ordinance and the SWMP with regards to the maintenance of BMP's designated in the SWMP, and in particular agrees to perform, at its sole cost, expense and liability, the following "MAINTENANCE ACTIVITIES": all inspections, cleaning, repairs, servicing, maintenance and other actions specified in the O&M PLAN, with respect to all of the BMP's listed at Recital "B" above, at the times and in the manner specified in the O&M PLAN. OWNER shall initiate, perform and complete all MAINTENANCE ACTIVITIES at the required time, without request or demand from CITY or any other agency. OWNER further agrees that "MAINTENANCE ACTIVITIES" shall include replacement or modification of the BMP's in the event that said BMP's do not function as intended. Replacement shall be with an identical type, size and model of BMP, except that:

(a) The CITY Engineer may authorize substitution of an alternative BMP if he or she determines that it will function as well or better than the original BMP; and

(b) Pursuant to Section 40.2.3(c) of the Stormwater Ordinance, if the failure of the BMP, in the judgment of the CITY Engineer indicates that the BMP in use is inappropriate or inadequate to the circumstances, the BMP must be modified or replaced with an upgraded BMP to prevent future failure.

2. **Notices.** OWNER further agrees that it shall, prior to transferring ownership of any land on which any of the above BMP's are located, and also prior to transferring ownership of any such BMP, provide clear written notice of the above maintenance obligations associated with that BMP to the transferee. OWNER further agrees to provide evidence to CITY that OWNER has requested the California Department of Real Estate to include in the public report issued for the development of the PROPERTY, a notification regarding the BMP maintenance requirements described herein.

3. **CITY's Right to Perform Maintenance.** It is agreed that CITY shall have the right, but not the obligation, to elect to perform any or all of the MAINTENANCE ACTIVITIES if, in the CITY's sole judgment, OWNER has failed to perform the same. It is recognized and understood that the CITY makes no representation that it intends to or will perform any of the MAINTENANCE ACTIVITIES and any election by CITY to perform any of the MAINTENANCE ACTIVITIES, shall in no way relieve OWNER of its continuing maintenance obligations under this agreement. If CITY elects to perform any of the MAINTENANCE ACTIVITIES, it is understood that CITY shall be deemed to be acting as the agent of the OWNER and said work shall be without warranty or representation by CITY as to safety or effectiveness, shall be deemed to be accepted by OWNER "as is", and shall be covered by OWNER's indemnity provisions below.

If CITY performs any of the MAINTENANCE ACTIVITIES, after CITY has demanded that OWNER perform the same and OWNER has failed to do so within a reasonable time stated in the CITY's demand, then OWNER shall pay all of CITY's costs incurred in performing the MAINTENANCE ACTIVITIES. OWNER's obligation to pay CITY's costs of performing MAINTENANCE ACTIVITIES is a continuing obligation and shall apply whether or not CITY has utilized all or any portion of the security provided pursuant to Paragraph 5.

4. **CITY'S Access Rights.** OWNER hereby authorizes the CITY to access perpetually over, under and across (insert either "all of the PROPERTY" or "that portion of the PROPERTY described in Exhibit "B" hereto") , for purposes of accessing the BMP's and performing any of the MAINTENANCE ACTIVITIES specified in Paragraph 1 above. CITY shall have the right, at any time and without prior notice to OWNER, to enter upon any part of said area as may be necessary or convenient for such purposes. OWNER shall at all times maintain the PROPERTY so as to make CITY's access clear and unobstructed.

5. **Security.** OWNER has provided CITY with security to assure the faithful performance of the obligations of this agreement. The security is in the form of (specify "a Cash Deposit" or "a letter of Credit") in the amount of $_____. CITY may utilize the security to provide funding for the cost of CITY performing any of the MAINTENANCE ACTIVITIES under Paragraph 3 above. CITY may utilize all or any part of the security at any time pursuant to this Agreement. Should any portion of the security be used by CITY,

OWNER shall deposit additional funds or provide an additional Letter of Credit to CITY in the amount utilized by CITY. If the security is a cash deposit, and a Substitute Cash Deposit or Letter of Credit is provided acceptable to the CITY, any amount of the Cash Deposit not utilized by CITY shall be returned to OWNER by a check made payable to OWNER and mailed first class to OWNER at the following address:

_____
_____
_____

The Letter of Credit shall be submitted on bank letterhead using the CITY approved form.

6. **Administration of Agreement for CITY.** CITY hereby designates its Engineer as the officer charged with responsibility and authority to administer this Agreement on behalf of CITY. Any notice or communication related to the implementation of this Agreement desired or required to be delivered to CITY shall be addressed to:

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

The City Engineer is also granted authority to enter into appropriate amendments to this Agreement on behalf of CITY, provided that the amendment is consistent with the purposes of this Agreement as set forth above.

7. **Defense and Indemnity.** CITY shall not be liable for, and OWNER and its successors in interest shall defend and indemnify CITY and the employees and agents of CITY (collectively "CITY PARTIES"), against any and all claims, demands, liability, judgments, awards, fines, mechanic's liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "CLAIMS"), related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of OWNER, OWNER's successors, or their contractors, licensees, agents, servants or employees, including, without limitation, claims caused by the concurrent negligent act, error or omission, whether active or passive of CITY PARTIES. OWNER shall have no obligation, however, to defend or indemnify CITY PARTIES from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of CITY PARTIES. Nothing in this Agreement, CITY's approval of the subdivision or other applications or plans and specifications, or inspection of the work, is intended to acknowledge responsibility for any such matter, and CITY PARTIES shall have absolutely no responsibility or liability therefore unless otherwise provided by applicable law.

8. **Common Interest Developments.** If the PROPERTY is developed as a "Common Interest Development" as defined in Civil Code section 1351(c) which will include membership in or ownership of an "ASSOCIATION" as defined in Civil Code section 1351(a), then the following provisions of this Paragraph 8 shall apply during such time as the PROPERTY is encumbered by a "DECLARATION" as defined in Civil Code section 1351(h), and the Common Area, as "Common Area" is defined in Civil Code section 1351(b), of the PROPERTY is managed and controlled by the ASSOCIATION:

(a) The ASSOCIATION, through its Board of Directors, shall assume full responsibility to perform the MAINTENANCE ACTIVITIES pursuant to this Agreement, and shall undertake all actions and efforts necessary to accomplish the MAINTENANCE ACTIVITIES, including but not limited to, levying regular or special assessments against each member of the ASSOCIATION sufficient to provide funding for the MAINTENANCE ACTIVITIES, conducting a vote of the membership related to such assessments if required by law. In the event insufficient votes have been obtained to authorize an assessment, the ASSOCIATION shall seek authority from a court of competent jurisdiction for a reduced percentage of affirmative votes necessary to authorize the assessment, re-conducting the vote of the membership in order to obtain the votes necessary to authorize an assessment, and the ASSOCIATION shall take all action authorized by the DECLARATION or California law to collect delinquent assessments, including but not limited to, the recording and foreclosure of assessment liens.

(b) No provision of the DECLARATION, nor any other governing document of the ASSOCIATION or grant of authority to its members, shall grant or recognize a right of any member or other person to alter, improve, maintain or repair any of the PROPERTY in any manner which would impair the functioning of the BMP's to manage drainage or stormwater runoff as described in the SWMP. In the event of any conflict between the terms of this Agreement and the DECLARATION or other ASSOCIATION governing documents, the provisions of this Agreement shall prevail.

9. **Agreement Binds Successors and Runs with the PROPERTY.** It is understood and agreed that the terms, covenants and conditions herein contained shall constitute covenants running with the land and shall be binding upon the heirs, executors, administrators, successors and assigns of OWNER and CITY, shall be deemed to be for the benefit of all persons owning any interest in the PROPERTY (including the interest of CITY or its successors in the Access Rights authorized herein). It is the intent of the parties hereto that this Agreement may be recorded and shall be binding upon all persons purchasing or otherwise acquiring all or any lot, unit or other portion of the PROPERTY, who shall be deemed to have consented to and become bound by all the provisions hereof.

10. **OWNER's Continuing Responsibilities Where Work Commenced or Permit Obtained.** Notwithstanding any other provision of this Agreement, no transfer or conveyance of the PROPERTY or any portion thereof shall in any way relieve OWNER of

or otherwise affect OWNER's responsibilities for installation or maintenance of BMP's which may have arisen under the ordinances or regulations of CITY referred to in Recital B above, or other federal, state or CITY laws, on account of OWNER having obtained a permit which creates such obligations or having commenced grading, construction or other land disturbance work.

11. **Amendment and Release.** The terms of this Agreement may be modified only by a written amendment approved and signed by the City Council or the CITY Engineer acting on behalf of CITY and by OWNER or OWNER's successor(s) in interest. This Agreement may be terminated and OWNER and the PROPERTY released from the covenants set forth herein, by a Release which CITY may execute if it determines that another mechanism will assure the ongoing maintenance of the BMP's or that it is no longer necessary to assure such maintenance.

12. **Governing Law and Severability.** This Agreement shall be governed by the laws of the State of California. Venue in any action related to this Agreement shall be in the Superior Court of the State of California, County of San Diego, North County Division. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 20 __ .

OWNER:

Name: _____

Signature:_____

Name: _____
Title:

Signature: _____

Name: _____
Title:

CITY OF OCEANSIDE:

Signature: _____

By: Scott C. Smith, City Engineer

APPROVED AS TO FORM:

Signature_____

By: Barbara Hamilton,
Assistant City Attorney

NOTARY ACKNOWLEDGEMENT MUST BE ATTACHED