

MAIL TO AFTER RECORDING:

SUSAN L. GUILLES

6249 N. 78TH ST., #37

SCOTTSDALE, AZ 85250

1925

Recorded Request Of

FIDELITY NATIONAL TITLE

PRIVATE FACILITIES MAINTENANCE & COST SHARING AGREEMENT

Order No. 9321173-K

County of San Diego,

Escrow No. 19819

Map No. 9648 & TPM#20052

February 10, 1994

LP

This Agreement for maintenance repair and cost sharing of those certain improvement facilities ("Facilities") located in, on or over that certain real property ("Project" or "Property") described in Exhibit "A" attached hereto and by reference made a part hereof is made this 10th day of February 1994, by Susan L. Guiles, Gary F. Simpson, and Carolyn J. Finlayson, all hereinafter referred to as "Developer" with reference to the following:

RECITALS

A. Developer is the owner of the real property located in the County of San Diego, State of California, more particularly described on Exhibit "A";

B. This Agreement is for the benefit of both the Developer and the future subdivision lot owners of record ("Lot Owners") which shall include the Developer to the extent Developer retains any record ownership interest in any lot or lots who will use and/or benefit from all or a portion of the Facilities (herein defined);

C. It is the desire that said Facilities be maintained in a safe and usable condition by the Lot Owners;

D. It is the mutual desire of the parties hereto to establish a method for the maintenance and repair of the Facilities and for the apportionment of the expense of such maintenance and repair among the existing and future Lot Owners.

E. It is the intention of the Developer that this Agreement constitute a covenant running with the land, binding upon each successive Lot Owner of all or any portion of the Property.

F. This Agreement shall be filed for record in the Office of the Recorder of San Diego County, California. It is the 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 provided in Paragraph 9, below, 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.

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. "PRIVATE ROAD" DEFINED. Private Road shall mean and refer to that certain private road easement as shown on that certain Map entitled County of San Diego, Parcel Map No. 9648, approved per County of San Diego standards for private streets. It consists of 2 inches, (2") of asphalt over six inches, (6") of D.G. base and compacted soil as per requirements of the County or a licensed soils engineer, extending from near the northwest corner to near the northeast boundary of Parcel 1, APN# 133-342-19. It also includes the extension of said road onto TPM20052, existing parcel 4, APN# 133-342-16.

3. "FACILITIES" DEFINED. Facilities shall mean and refer to those private easements which shall include but not be limited to the following:

- (a) Any telephone, cable television or electrical switches, wire cables, electronic gates, transformers and similar equipment, which serve as master utility facilities for service to the individual lots ("Master Utility Facilities")
- (b) Also included are water, sewer, gas or drainage facilities, if any.

4. MAINTENANCE AND REPAIR DEFINED. The maintenance and repairs to be undertaken and 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 total number of lots including subdivisions thereof as described in paragraph 6 below:

- (a) Periodic inspection, maintenance and replacement of housings, electrical components, wires and cables of any "master" telephone, cable television electronic gate transformer or similar equipment providing service to all lots in the Project.
- (b) 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 8 below.
Reasonable and normal road improvement and maintenance work to adequately maintain said private road easement and related drainage

facilities to permit all weather access. Repairs and maintenance under this Agreement shall include, but is not limited to filling 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 for proper maintenance and to preserve the easement for all weather road purposes.

- (c) 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.
- (d) If there is a covenant, agreement, or other obligation imposed as a condition of subdivision approval, to make private road improvements to the private road easement, the obligation to repair and maintain the private road easement as herein set forth shall commence when the private road improvements have been completed and approved by the County of San Diego. In the event that the County of San Diego, will not or does not wish to approve the completed road, the standards shall be as per a licensed soils engineer or the engineer of work, hired by the Owner, whichever requirements are the most stringent.

5. DIVISION OF COSTS. The costs and expenses of maintaining the Private Road and Facilities shall be divided equally among those subdivided parcels using the road easement for ingress and egress to their respective parcels or accessing the Facilities described herein. Costs and expenses of each Facility shall be paid by each Lot Owner whose Lot accesses or utilizes that Facility. Costs and expenses shall be paid by the Lot Owner or their heirs, assigns and successors in interest of each such owner.

Should any Lot Owner fail to pay the pro rata share of costs and expenses as 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 provisions 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 fees.

6. FURTHER SUBDIVISION. It is understood that further subdivision on adjoining parcels may occur and each and every Lot Owner agrees to cooperate with requirements of the County of San Diego or the requirements of any other official agency regarding that subdivision, if requested.

In the event any of the herein described parcels are further subdivided, the Lot Owners, heirs, assigns and 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.

It is understood and agreed that the foregoing covenants shall inure to the benefit of, be binding upon and pass with each lot and each and every ownership interest therein, and shall inure to the benefit of and apply to and bind the respective successors in title or interest of each Lot Owner.

7. INSURANCE. Each Lot Owner shall obtain and maintain, at the Owner's sole expense, a comprehensive liability policy, for no less than one million dollars, insuring the Owner and his or her family, occupants, guests, invitees and agents against any liability incident to ownership or use of his or her Residential Lot.

8. PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY. 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.

9. ENFORCEMENT. The Developer or any Owner shall have the right to enforce, by any proceeding at law or in equity, the terms of this Agreement and subsequent amendments, if any, including the right to prevent the violation of any such terms and the right to recover damages or other dues for such violation.

The result of every act or omission, whereby any term contained in this Agreement is violated in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private shall be applicable against every such result and may be exercised by any Owner. Each remedy provided by this Agreement shall be cumulative and not exclusive and in addition to other remedies provided in this Agreement and to all other remedies at law or in equity.

Failure by the Developer or any Owner to enforce any provisions of this Agreement shall in no event be deemed a waiver of the right to do so thereafter.

10. DESIGNATION OF AGENT. It is agreed that the Developer shall be the initial 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 Developer may continue in such capacity until such time that all of the Lots owned by the Developer, in the Project are sold and conveyed by the Developer to separate Owners thereof; or, five years from the date of sale of the first Lot in the Project, whichever shall first occur, at which time the Developer may be replaced at the direction of a majority of the Lot Owners. Any subsequent Agent may at any time be replaced at the direction of a majority of the Lot Owners. All duties and responsibilities of an Agent shall cease upon his or her replacement.

11. LITIGATION. In the event the Declarant, or any Owner shall commence litigation to enforce any of the conditions or restricts herein contained the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover his costs shall not recover attorney's fees.

12. AMENDMENTS. This Agreement may be amended by written instrument (or counterparts thereof) by:

1. Signed and acknowledged by the Owners (or their duly appointed Attorney-in-Fact) of at least seventy-five percent (75%) of the Lots.
2. By Developer as long as Developer owns two (2) or more Lots, signed and acknowledged by Developer.

Such amendment shall be filed for record in the Office of the Recorder of San Diego County, California. The foregoing notwithstanding, unless prior consent is obtained by one-hundred percent (100%) of the Lot Owners, no amendment to this Agreement may be made which would change the equal division of costs and expenses among the subdivided parcels described in Paragraph 5; or change the responsibilities of maintenance and repair required herein on any one Lot Owner. Each such amendment shall become effective upon such recording.

13. SEVERABILITY. 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 in law or equity by any court of competent jurisdiction,

the validity, and enforceability of the remaining provisions shall not be affected thereby.

14. NOTICE. In each instance in which notice is to be given to the Owner of a Lot, the same shall be in writing and may be delivered personally in which case personal delivery of such notice to one or two or more Co-Owners or to the Partnership, as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such Lot shall be deemed delivered to the corporation, or such notice may be delivered by certified, United States Mail, or registered postage prepaid, return receipt requested, addressed to the Owner of such Lot at the most recent address furnished by such Owner in writing for the purposes of giving notice, or, if no such address shall have been furnished then to the street (or Post Office Box) address of such Lot, and any notice so deposited in the mail within San Diego County, California, shall be deemed delivered seventy-two (72) hours after such deposit.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date included hereinbefore.

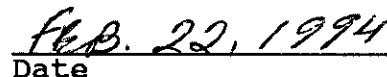
DEVELOPER:

Carolyn J. Finlayson

Date



Gary F. Simpson



Date

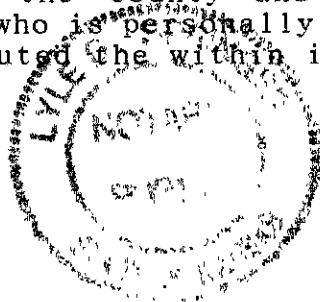
Susan L. Guiles

Date

(Please Attach Proper Notary Jurat, Certificate(s) of Acknowledgment)

STATE OF KANSAS, MONTGOMERY COUNTY, ss.

BE IT REMEMBERED That on this 22nd day of February A.D., 1994 before me the undersigned, a notary public in and for the county and state aforesaid came: Gary F. Simpson who is personally known to me to be the same person who executed the within instrument.



Lyle D. Springer
Expires 2-13-98

DOC # 1994-0138352
02-MAR-1994 08:00 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
COUNTY RECORDER

RF:	9.00	FEES:	23.00
AF:	13.00		
MF:	1.00		

RP