

Recording requested by:)
)
When Recorded Mail To:)
)
District Clerk)
San Dieguito Water District)
505 S. Vulcan Avenue)
Encinitas, CA 92024)
_____)

SPACE ABOVE FOR RECORDER'S USE

**LIEN COVENANT REGARDING REAL PROPERTY:
IMPROVEMENTS REQUIRED AS CONDITION ON
FINAL APPROVAL OF DEVELOPEMENT OF REAL PROPERTY.**

Assessor's Parcel
No. _____

Agreement No.: _____

A. _____ ("DEVELOPER" hereinafter) are the owners of real property which is commonly known as _____ ("PROPERTY" hereinafter) and which is described as follows:

See Attachment A which is attached hereto and made a part hereof.

B. The development of the PROPERTY was approved with the final approval subject to certain conditions requiring the construction of improvements by DEVELOPER. DEVELOPER has applied for final approval of the project but has not constructed the required improvements. In consideration of the final approval of the development of the PROPERTY by the San Dieguito Water District ("DISTRICT" hereinafter), DEVELOPER hereby covenants and agrees for the benefit of DISTRICT, to do the following:

See Attachment B which is attached hereto and made a part hereof.

C. This Covenant shall run with the land and be binding upon and inure to the benefit of the future owners, encumbrances, successors, heirs, personal representatives, transferees and assigns of the respective parties.

D. DEVELOPER agrees that DEVELOPER's duties and obligations under this Covenant are a lien upon the PROPERTY. Upon notice and opportunity to respond, DISTRICT may add to the property tax bill of the PROPERTY any past due financial obligation owing to DISTRICT by way of this Covenant.

E. If either party is required to incur costs to enforce the provisions of this Covenant, the prevailing party shall be entitled to full reimbursement of all costs, including reasonable attorneys' fees, from the other party.

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F. Failure of DEVELOPER to comply with the terms of this Covenant shall constitute consent to the filing by DISTRICT of a Notice of Violation of Covenant.

G. Upon DEVELOPER's satisfactory completion of DEVELOPER's duties and obligations contained herein, DEVELOPER may request and DISTRICT shall execute a Satisfaction of Covenant.

H. By action of the Board of Directors, DISTRICT may assign to a person or persons impacted by the performance of this , the right to enforce this Covenant against DEVELOPER.

ACCEPTED AND AGREED.

DEVELOPER

Dated _____

(Notarization of DEVELOPER'S signature is attached)

SAN DIEGUITO WATER DISTRICT

Dated _____ by _____
Kerry L. Miller
District Manager

(Notarization not required)

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ATTACHMENT A TO
LIEN COVENANT REGARDING REAL PROPERTY:
IMPROVEMENTS REQUIRED AS CONDITION ON
FINAL APPROVAL OF DEVELOPEMENT OF REAL PROPERTY.

AGREEMENT NO. _____

PROPERTY DESCRIPTION

ATTACHMENT B TO
LIEN COVENANT REGARDING REAL PROPERTY:
IMPROVEMENTS REQUIRED AS CONDITION ON
FINAL APPROVAL OF DEVELOPEMENT OF REAL PROPERTY.

AGREEMENT NO. _____

DEVELOPER'S DUTIES AND OBLIGATIONS

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Developer: _____

1.0 PROJECT REQUIREMENTS

1.01 No facilities will be installed prior to the acceptance by the District:

- A) Good and Sufficient Security.
- B) Acceptable Certificate of Insurance.

1.02 Developer to provide compaction testing per the requirements of the San Dieguito Water District.

1.03 Developer to provide for construction staking and surveying for the proposed water facilities.

1.04 DEVELOPER shall, at DEVELOPER'S expense, obtain all necessary permits and licenses for the construction of the water improvements and give all necessary notices and pay all fees and taxes required by law.

1.05 All public water facilities shall be installed by a Class A or Class C-34 licensed contractor.

1.06 The plans provided for in this "Covenant" conform to the current standards of the DISTRICT. The DEVELOPER will be required to conform to the standards applicable on the date upon which construction is commenced on the development if construction is not commenced within six months of the date of the execution hereof by the DISTRICT.

1.07 DEVELOPER shall convey to DISTRICT easements, using the DISTRICT Form of Easement covering the property in which the water facilities are located at all instances where the facilities are not located in a dedicated street. Owner shall have his Engineer provide DISTRICT with a legal description and a 8 1/2" x 11" plat of easements.

1.08 DEVELOPER agrees at DEVELOPER's own cost and expense to furnish all the labor, equipment and materials to perform and complete, in accordance with the plans and specifications and to the satisfaction and approval of the District Engineer, all of the improvements referred to below:

- A) _____ \$ _____
- B) _____ \$ _____
- C) _____ \$ _____
- D) _____ \$ _____
- E) _____ \$ _____
- F) _____ \$ _____

G) _____ \$ _____
 H) _____ \$ _____
 I) _____ \$ _____
 J) 10% Contingencies _____ \$ _____
 Total Cost Estimate: _____ \$ _____

1.09 IMPROVEMENT SECURITY:

A) 100% of Cost Estimate \$ _____

1.10 MISCELLANEOUS COSTS:

_____ \$ _____

1.11 CAPACITY CREDIT: (OFFSETS NEW CAPACITY FEES ONLY)

<u>Account Number</u>	<u>SDWD</u>	<u>SDCWA</u>
A) _____	\$ _____	\$ _____
B) _____	\$ _____	\$ _____
C) _____	\$ _____	\$ _____
D) _____	\$ _____	\$ _____
Total Capacity Credit	\$ < _____ >	\$ < _____ >

1.12 SDWD METER FEES:

	<u>Installation</u>	<u>Capacity</u>
A) _____	\$ _____	\$ _____
B) _____	\$ _____	\$ _____
C) _____	\$ _____	\$ _____
D) _____	\$ _____	\$ _____
E) _____	\$ _____	\$ _____
Capacity Credit (Refer to Sec. 1.11)	\$ < _____ >	\$ < _____ >
Totals	\$ _____	\$ _____
		Total Meter Fees: \$ _____

1.13 SDCWA CAPACITY FEES:

	<u>Capacity</u>
A) _____	\$ _____
B) _____	\$ _____
Capacity Credit (Refer to Sec. 1.11)	\$ < _____ >
Total Capacity Fees: \$ _____	

1.14 CAPACITY FEE: (FIRE)

A) _____	\$ _____
B) _____	\$ _____
Total Capacity Fees: \$ _____	

1.15 INSPECTION DEPOSIT:

\$ _____

1.16 DEPOSITS & FEES:

Engineering Fees	\$ _____
SDWD Meter Fees	\$ _____
SDCWA Capacity Fees	\$ _____
Fire Capacity Fees	\$ _____
Inspection Deposit	\$ _____

*TOTAL ESTIMATED DEPOSITS & FEES REQUIRED: \$ _____

1.17 The water meter fees, including installation and capacity, are established from time to time by the Board of Directors of the DISTRICT and the San Diego County Water Authority. The DEVELOPER will be required to conform to the installation and capacity fees which are applicable on the date of payment. Construction will not be allowed to commence until all water fees have been received.

1.18 The above figures for deposits are estimates only and may vary accordingly. Upon completion of installation, cost will be computed and billing or refund will be issued to DEVELOPER.

1.19 In the event a 90-day period elapses from the date of recordation of the Covenant, the above estimated deposits and fees must be revised and are subject to condition of agreement with DISTRICT.

1.20 Filing of the Notice of Completion shall not be accomplished until the following requirements have been complied with:

A) All work has been completed in accordance with the plans and specifications, all gate wells have been set flush with the street surface, and meter boxes set to finish grade;

B) A set of original plans (photo mylars), corrected to conform with the work as constructed, has been submitted to the DISTRICT.

2.0 PROGRESS OF WORK

2.1 Time is of the essence with this Covenant. DEVELOPER shall commence substantial construction of the improvements required by this Covenant not later than _____ and shall complete the improvements no later than _____. In the event good cause exists, as determined by the District Engineer, the time for commencement of construction or completion of the improvements hereunder may be extended. Any such extension may be granted without notice to DEVELOPER's Surety or Sureties, if any, and shall in no way affect the validity of this Covenant or release the Surety or Sureties on any security given for the faithful performance of this Covenant. The District Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle DEVELOPER to an extension. As a condition of such extensions, the District Engineer may require DEVELOPER to furnish new security guaranteeing performance of this Covenant, as extended, in an increased amount as necessary to compensate for any increase in construction costs as determined by the District Engineer.

2.2 If any of the public improvements are to be constructed or installed on land not owned by DEVELOPER, no construction or installation shall be commenced prior to the acquisition and acceptance by DISTRICT of appropriate property interests. DEVELOPER shall pay the actual costs of acquisition of such property interests.

2.3 DEVELOPER shall, at DEVELOPER's expense, obtain all necessary permits and licenses for the construction of the improvements and give all necessary notices and pay all fees and taxes required by law.

2.4 DEVELOPER shall notify the District Engineer in writing at least 15 days prior to the commencement of work hereunder. No construction work shall begin until authorized by DISTRICT.

2.5 DEVELOPER shall not be entitled to obtain occupancy permits for the buildings constructed on any lot created by the subdivision until all required improvements have been provided to the satisfaction of the District Engineer.

2.6 DEVELOPER shall at all times maintain safe construction facilities, and provide safe access, for inspection by DISTRICT, to all parts of the work and to the shops wherein the work is in preparation.

2.7 DEVELOPER shall give good and adequate warning to the public to each and every existing danger relating to the construction of the improvements, and shall protect the public from such dangers.

3.0 INSPECTION/ACCEPTANCE OF IMPROVEMENTS

3.1 The District Engineer or his duly authorized representative, upon request of DEVELOPER, shall inspect, at DEVELOPER's expense, the improvements herein agreed to be constructed and installed by DEVELOPER. If determined to be in accordance with applicable DISTRICT standards and the other terms of this Covenant, the District Engineer shall approve the improvements and recommend the acceptance of the public improvements by DISTRICT through resolution of the DISTRICT Board of Directors.

3.2 The DEVELOPER agrees to pay for each inspection of the improvements required by the District Engineer.

3.3 Approval of the improvements and acceptance of the public improvements by District, shall not constitute a waiver by DISTRICT of any defects in the improvements.

3.4 Until such time as the improvements required by this Covenant are fully completed by DEVELOPER, approved by the District Engineer and the public improvements are accepted by DISTRICT, DEVELOPER will be responsible for the care, maintenance, repair and replacement of such public improvements.

4.0 GUARANTEE/WARRANTY

4.1 ONE YEAR. DEVELOPER hereby guarantees and warrants the public improvements constructed pursuant to this Covenant for a period of one year after final acceptance of said work to include design, work, labor and materials furnished. If within the one-year period, any public improvement or part of any public improvement furnished,
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installed or constructed, or caused to be furnished, installed or constructed by DEVELOPER, fails to fulfill any of the requirements of this Covenant or otherwise fails to function to the satisfaction of the DISTRICT,, DEVELOPER shall without delay and without any cost to DISTRICT, repair, replace or reconstruct any failing part or parts of the public improvement.

4.2 TEN YEARS. For ten years following the acceptance by DISTRICT of the public improvements, DEVELOPER shall remain obligated to cure all identified defects in the design, construction, materials of the public improvements.

5.0 SECURITY

5.1 FOR CONSTRUCTION OF IMPROVEMENTS

A. Prior to the sale or transfer of all or any portion of this project, or prior to the issuance of any development permits for this project, DEVELOPER shall furnish to DISTRICT good and sufficient security in the form of a cash deposit, a letter of credit or other security as approved by the District Engineer in the amount of 100% of the then-current estimate of construction costs of the improvements to assure faithful performance of this Covenant.

B. In the event that changes, alterations or additions to the improvement plans and specifications or to the improvements add 10% or more to the original estimated costs of the improvements, DEVELOPER shall provide additional security in a form satisfactory to DISTRICT in an amount equal to 100% of the total estimated increase in the construction cost of the improvements. The amount of the additional security may be adjusted by the amount of work completed and any prior, partial releases of security.

5.2 FOR ONE YEAR GUARANTEE/WARRANTY. DEVELOPER shall furnish to DISTRICT good and sufficient security, in the form of a cash deposit, letter of credit or other security as approved by the District Engineer, in the amount of 25% of the estimated total cost of the public improvements, to secure DEVELOPER's guarantee and warranty specified herein for a period of one year following the acceptance by DISTRICT of the public improvements.

6.0 CURING OF DEFAULTS

6.1 In the event that DEVELOPER fails to perform any duty or obligation imposed by this Covenant, DEVELOPER hereby authorizes DISTRICT, at DISTRICT's option, to perform such duty or obligation twenty (20) days after DISTRICT mails written notice of default to DEVELOPER and DEVELOPER fails to cure such default. DEVELOPER agrees to pay the actual costs of such performance by DISTRICT. The security posted by DEVELOPER pursuant to this Covenant may be used by DISTRICT for the completion of such performance, but shall not limit DEVELOPER's liability.

6.2 In the event of DEVELOPER'S uncured default, DISTRICT may take over the work and prosecute the same to completion, by contract or by any other method DISTRICT may deem advisable, for the account and at the expense of DEVELOPER. DEVELOPER shall be

liable to DISTRICT for the actual costs or damages occasioned DISTRICT thereby. Without liability for so doing, DISTRICT may take possession of the construction site and the work. In completing the work, DISTRICT may utilize such materials, appliances, plans and other property belonging to DEVELOPER as may be on the site of the work and necessary therefore.

6.3 Should the exigencies of the case require repairs, replacements, or work to be done before DEVELOPER can be notified and given seven days to perform, DISTRICT may, at DISTRICT's option and without liability, make the necessary repairs or replacements or perform the necessary work and DEVELOPER shall pay to DISTRICT the actual costs of so doing.

7.0 HOLD HARMLESS

7.1 DEVELOPER agrees to indemnify and hold DISTRICT and DISTRICT's officers, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of DEVELOPER or DEVELOPER's agents, employees, subcontractors, officials, officers or representatives. Upon demand, DEVELOPER shall, at its own expense, defend DISTRICT and DISTRICT's officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

7.2 DEVELOPER's obligation herein includes, but is not limited to, alleged defects in the plans, specifications and design of the improvements; but does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of a defect in the plans, specifications or design that is a result of a change required by DISTRICT to the DEVELOPER's proposed plans, specifications or design so long as such change is objected to, in writing, by the DEVELOPER, and the writing is filed with the District Engineer more than ten days prior to the commencement of work.

7.3 DEVELOPER's obligation herein includes, but is not limited to, alleged defects in the construction of the improvements; alleged defects in the materials furnished in the construction of the improvements; alleged injury to persons or property; alleged inverse condemnation of property or a consequence of the design, construction, or maintenance of the work or the improvements; and any accident, loss or damage to the work or the improvements prior to the acceptance of same by DISTRICT.

7.4 By approving the improvement plans, specifications and design; by inspecting or approving the improvements; or by accepting the public improvements, DISTRICT shall not have waived the projections afforded herein to DISTRICT and DISTRICT's officers, officials, employees and agents or diminished the obligation of DEVELOPER who shall remain obligated in the same degree to indemnify and hold DISTRICT and DISTRICT's officers, officials, employees and agents, harmless as provided above.

7.5 DEVELOPER's obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of DISTRICT's intentional wrongful acts, DISTRICT's violations of law, or DISTRICT's sole active negligence.

8.0 INSURANCE

8.1 The DEVELOPER shall obtain and maintain a policy of motor vehicle liability, public liability, general liability and property damage insurance from an insurance company approved by DISTRICT and authorized to do business in the State of California, in an insurable amount of not less than one million dollars (\$1,000,000.00) for each occurrence. The insurance policy shall provide that the policy shall remain in force during the life of this COVENANT and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice to DISTRICT from the insurance company.

8.2 DISTRICT shall be named as an additional insured on DEVELOPER's policies.

8.3 DEVELOPER shall provide a Certificate of Workers' Compensation insurance to the DISTRICT.

8.4 DEVELOPER shall furnish certificates of said insurance to DISTRICT prior to commencement of work under this COVENANT.

9.0 NOTICES

9.1 Any notices to be given under this COVENANT, or otherwise, shall be served by certified mail.

9.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of DISTRICT and the proper person to receive any such notice on its behalf is:

District Engineer
San Dieguito Water District
505 S. Vulcan Avenue
Encinitas, CA 92024

and the address of DEVELOPER and the proper person to receive any such notice on its behalf is:

10.0 DEVELOPER'S CERTIFICATION OF AWARENESS OF

IMMIGRATION REFORM AND CONTROL ACT OF 1986

DEVELOPER certifies that DEVELOPER is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in, satisfy the duties and obligations contained herein.

11.0 PREVAILING WAGES

11.1 DEVELOPER has been alerted to the requirements of California Labor Code section 1770 et seq., which would required the payment of prevailing wage rates and the performance of other requirements if it were determined that this Covenant constitutes a public works contract. DEVELOPER has also been advised and understands that the Office of the Attorney General of the State of California has rendered an Opinion (No. 86-803) concluding that prevailing wages must be paid by a private developer where a public agency retains control over construction of the project and the facilities are ultimately dedicated to the public agency. DEVELOPER has further been advised that the California Department of Industrial Relations presently disagrees with the position taken by the Office of the Attorney General in Opinion No. 86-803.

11.1 It shall be the sole responsibility of the DEVELOPER to determine whether to pay prevailing wages for any or all work required by this Covenant. As a material part of this Covenant, DEVELOPER agrees to assume all risk and liability arising from DEVELOPER's decision not to pay prevailing wages for work required by this Covenant.

11.2 As a further material part of this Covenant, DEVELOPER agrees to hold harmless and indemnify the DISTRICT and its officers, employees, consultants, and agents from any and all claims, liability, loss, costs, damages, expenses, fines, and penalties of whatever type or nature, including all costs of defense and attorney's fees, arising from any alleged failure of the DEVELOPER, or DEVELOPER's contractors or subcontractors, to comply with the prevailing wage laws of the State of California. If the DISTRICT or any of the indemnified parties are named as a party in any dispute arising from the failure of DEVELOPER or DEVELOPER's contractors or subcontractors to pay prevailing wages, DEVELOPER agrees that the DISTRICT and the other indemnified parties may appoint their own independent counsel, and DEVELOPER agrees to pay all attorney's fees and defense costs of the DISTRICT and the other indemnified parties as billed, in addition to all other damages, fines, penalties, and losses incurred by the DISTRICT and the other indemnified parties as a result of the action.

12.0 GENERAL PROVISIONS

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12.1 Neither DEVELOPER nor any of DEVELOPER's agents or contractors are or shall be considered to be agents of DISTRICT in connection with the performance of DEVELOPER's duties and obligations under this Covenant.

12.2 Sale or other disposition of the PROPERTY will not relieve DEVELOPER from the duties and obligations set forth herein.

12.3 DEVELOPER shall provide the improvements as an independent contractor and in pursuit of DEVELOPER's independent calling, and not as an employee of DISTRICT. DEVELOPER shall not be under control of the DISTRICT except as to the result to be accomplished. DEVELOPER may confer with DISTRICT as required to perform this Covenant.

12.4 No verbal agreement or conversation with any officer, official, agent or employee of DISTRICT, either before, during or after the execution of this Covenant, shall effect or modify any of the terms or obligations herein contained.