

MAINTENANCE COVENANT (PLATINUM TRIANGLE)

This prototype covenant is intended to provide general language which may be helpful to you in preparation of a covenant required by the City of Anaheim as a condition of approval for development of property in the Platinum Triangle. It should not be construed as representing legal advice on specific, individual matters. Applicants should consult their attorneys regarding use of this prototype in individual situations and upon its legal effect.

The Declaration of Covenants must be unsubordinated. This means that lienholders must agree to be subject to the Declaration if there is a foreclosure. A sample subordination agreement is attached.]

Recording requested by,
and when recorded return to:

(Space Above For Recorder's Use)

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS ("Declaration") is made this ____ day of _____, _____, by _____, a _____ ("Declarant"), with reference to the following facts:

R E C I T A L S:

A Declarant is the owner of that certain real property located in the City of Anaheim ("City"), County of Orange, State of California, more particularly described in attached Exhibit "A" ("Property").

B. The Property is located in the Platinum Triangle area of the City.

C. Declarant plans to develop the property as a mixed used commercial/residential subdivision ("Project") in accordance with the various provisions of the Platinum Triangle Overlay Zone of the City, the requirements of Development Agreement No. _____, and in conformance with the provisions in that certain Tentative Tract Map _____ pertaining to the Property, which was approved by the _____ [e.g. Planning Commission, or City Council] _____ on _____.

D. In connection with approval of the Project, the City required Declarant to record covenants regarding the maintenance of certain slopes, trails, private streets and private utilities, and the performance of other obligations.

E. The City has required Declarant to record this Declaration prior to the recordation of Final Tract Map _____ imposing against each owner of a lot in Tract Map _____ obligations to maintain those certain facilities identified on Exhibit "B" attached hereto until a declaration of conditions, covenants and restrictions is recorded which provides for assumption by an association of the maintenance responsibilities required by the City and this Declaration.

NOW, THEREFORE, in consideration of the above-referenced facts, Declarant hereby declares as follows:

1. On-Site Maintenance Covenants. Prior to the earlier of either the sale of the first residential lot or the issuance of the temporary or permanent "Certificate of Occupancy" for the first residential dwelling unit in Tract Map _____, Declarant shall execute and record with the Orange County Recorder a declaration of covenants, conditions and restrictions ("CC&Rs") satisfactory to the California Department of Real Estate creating maintenance obligations for an incorporated homeowners association ("Association") to establish a financial mechanism or financial mechanisms to maintain those areas and facilities (collectively referred to hereinafter as the "Common Area") depicted on Exhibit "B" attached hereto. Such Area shall include the following:

[Describe the maintenance obligations imposed on the project, which may include the following:

- a. Hiking and equestrian trails;
- b. Private streets and street lights (include street name, if applicable);
- c. Private sewer and storm drain lines, together with all appropriate appurtenances;
- d. Landscape slope areas and all drainage facilities (including, but not limited to, french drains, down drains, drainage swales, retaining and crib wall(s) etc.);
- e. Open space slopes and fuel modifications areas, including any irrigation systems associated therewith; and
- f. Landscape maintenance easements.
- g. Parkway and median island landscaping and irrigation.

- h. Covered on-site storage for bicycles, scooters and athletic equipment screened from public view.
- i. Washer and dryer in each dwelling unit.
- j. Centralized recreational amenities appropriate to the population mix in the development, as approved by the City.

The obligations described above and depicted in the Maintenance Exhibit shall collectively be referred to as the "Maintenance Obligations." Until such time as the Association is formed, the CC&Rs are recorded, the Common Area is conveyed in fee to the Association, and the Association has assumed responsibility to maintain the Common Area and perform the Maintenance Obligations, Declarant shall be responsible for the maintenance of the Common Area and performance of the Maintenance Obligations, including any additional obligations which may be specified in Resolution No. _____ approving Tentative Tract Map _____. Reconveyance of all or part of the Common Area or any property interest therein to a party other than the Association shall require (i) the prior written consent of the City, (ii) appurtenant easements over the Common Area for the benefit of each and every lot in the Tract Map and (iii) that the reconveyance expressly affirm that the provisions of Civil Code Section 1367 relating to lien rights to enforce delinquent assessments and the CC&Rs shall remain applicable.

2. Satisfaction of Conditions of Approval. This Declaration is intended to satisfy Condition of Approval No. _____ of Tentative Tract Map _____.

3. Not a Public Dedication. It is the Declarant's intention that this Declaration shall be strictly limited to the purposes expressed in the Declaration, and nothing in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general welfare for any specific purpose.

4. Severability. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion shall remain full force and effect.

5. Nature and Purpose of Covenants. The covenants and restrictions set forth in this Declaration constitute a general scheme for the development, protection and maintenance of the Property for the benefit of all owners. Said covenants and restrictions are for the benefit of the Property and shall bind all owners thereof. Such covenants and restrictions shall be a burden upon, and a benefit to, not only the Declarant but also its successors and assigns. All of such covenants and restrictions are intended to be and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be.

6. Covenants Running With the Land. Each covenant contained in this Declaration is a covenant running with the land, binding upon and inuring to the benefit of each heir, assignee and successor-in-interest of Declarant as the owner of all or any portion of the Property, and the term "Declarant," as used herein, shall be deemed to include such heirs, assigns and successors-in-interest. Each deed, lease or conveyance of all or any portion of the Property, or any interest therein, shall expressly reference and be subject to all the provisions of this Declaration.

7. Duration. This Declaration, including each covenant contained herein concerning the Common Area, shall automatically terminate upon recordation of CC&R's and establishment of an Association which assumes responsibility for administering the Common Area and performing the Maintenance Obligations set forth in this Declaration and in the recorded CC&R's. As an additional condition for termination of this Covenant, the CC&R's shall provide that termination of the CC&R's or amendment of any provision which may negatively impact performance of the Maintenance Obligations shall require prior written consent of the City. Termination of this Declaration is not a release of Declarant with regard to Declarant's independent obligations in connection with development and approval of the Project or with regard to obligations and liabilities incurred prior to such termination.

8. Exhibits. All exhibits to this Declaration are incorporated by this reference. Notwithstanding Exhibit "B," the as built conditions, as approved by the City of Anaheim, shall control.

9. Construction. This Declaration shall be construed in accordance with the laws of the State of California. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration. In this Declaration, whenever the context requires, the singular number includes the plural and vice versa, and the masculine and neuter gender shall be mutually inclusive.

10. Injunctive Relief. In addition to any other legal remedies available to the City, the City shall have the right to seek injunctive relief or other remedy necessary to allow the City to restrain Declarant from selling, assigning or otherwise transferring any interest in the Property if Declarant is in violation of this Declaration. In the event the City is required to bring an action to enforce the terms of this Declaration, the City shall be entitled to reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, this Declaration has been executed by the owner of the Property as of the date first above written at

_____.

"DECLARANT"

a [type of entity]

By:_____

Its:_____

By:_____

Its:_____

APPROVED AS TO CONTENT:

DIRECTOR OF PUBLIC WORKS/CITY ENGINEER
City of Anaheim

APPROVED AS TO FORM:
Jack L. White, City Attorney
City of Anaheim

By:_____
Title:_____

[Each Declarant's signature must be acknowledged by a notary.]

[1022.2\smann]