

Recording Requested By:

Encinitas Ranch Community Assn.

When Recorded, Return to:

Katrina Tanjuakio, CCAM
N.N. Jaeschke, Inc.
9610 Waples Street
San Diego, California 92121

A.P.N. Add Assessor's Number

**AGREEMENT CONCERNING REAL PROPERTY
(Permissive Maintenance Agreement)**

This Agreement Concerning Real Property (hereinafter "Agreement") is made by and between Add All Present Owners and Trust Information as Appropriate (hereinafter, "Owner") and the Encinitas Ranch Community Association, a California nonprofit mutual benefit corporation ("Association").

RECITALS

A) Owner presently owns the property located at Add Address, Encinitas, California 92024 (hereinafter, "Residential Lot"). The Property is more particularly described in that legal description labelled "Exhibit A," which is attached hereto and incorporated herein by this reference.

B) The Residential Lot is part of Encinitas Ranch, a common interest development as defined by California Civil Code Section 4100. Encinitas Ranch is bound by the Declaration of Covenants, Conditions and Restrictions for Encinitas Ranch (hereinafter, "CC&Rs") recorded on February 26, 1999, as Document Number 1999-0121953, as amended or may be amended from time to time.

C) Presently, the Association has the duty to maintain the exterior surface of a Perimeter Wall, as defined in Section 2.50 of the CC&Rs, that is comprised of concrete masonry units (hereinafter, a "CMU Wall") pursuant to the CC&Rs. The Owner has the duty to maintain the interior surface of such CMU Wall. The Association also has the duty to repair and replace such CMU Wall and any wrought iron or tubular steel fencing attached to it. (See CC&Rs at Section 9.1.7).

D) Owner seeks to install glass panels and supports (hereinafter, the "Glass Wall System") on top of the CMU Wall along the boundary between Owner's Residential Lot and the adjacent area that is owned or maintained by the Association.

E) Owner seeks consent from the Board of Directors (hereinafter, the "Board") on behalf of the Association to install a Glass Wall System on top of the CMU Wall.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the Association and the Owner, for themselves and for their respective successors, assigns, heirs, devisees, executors, and administrators (hereinafter, "Successors"), agree and promise as follows:

1) Consent of Association. The Board consents on behalf of the Association to the installation and maintenance of the Glass Wall System by Owner in accordance with the terms and conditions of this Agreement.

2) Installation of Glass Wall System. Owner shall install, at Owner's sole expense, Owner's Glass Wall System on top of the CMU Wall along the boundary between Owner's Residential Lot and the adjacent area that is owned or maintained by the Association. Owner shall not commence construction until this Agreement has been recorded in the Official Records of the County of San Diego. Owner promises to commence construction of the Glass Wall System within three months of the recording of this Agreement in said Official Records. Owner further promises to complete construction of the Glass Wall System within three weeks after commencing construction.

3) Association and Governmental Approvals. Owner shall obtain from the Board and the Architectural Committee any approvals required by the CC&Rs or any rules or regulations adopted pursuant thereto. Owner shall obtain any permits required from the City of Encinitas or other governmental entity. Owner shall provide to the Association a copy of each permit approved by the City of Encinitas or other governmental entity before commencing work or, in any event, within fifteen (15) days after receiving such approval.

4) Maintenance Responsibilities. Owner shall maintain, repair, and replace said Glass Wall System and the CMU Wall, including its exterior surface (hereinafter, the "Maintenance Responsibilities"), at Owner's sole expense regardless of the reason or reasons for any damage or deterioration thereto. The Maintenance Responsibilities shall be performed by Owner so that the Glass Wall System and CMU Wall are kept in good condition and appearance, and in compliance with the CC&Rs and the rules and regulations of Encinitas Ranch and all governmental regulations. Owner agrees that, if replacement of the Glass Wall System and/or the CMU Wall is necessary, Owner will replace in "like-kind" unless otherwise agreed to by the Board.

5) Inspections. The Glass Wall System and CMU Wall shall be subject to inspection from time to time by the Association upon seven (7) days' prior written notice to Owner. Owner shall provide or cause to be provided access across the Residential Lot to the representatives of the Association and any of its professional consultants.

6) Workers' Compensation Insurance. Owner shall cause each contractor and each subcontractor, if any, performing work for Owner on the Glass Wall System or the CMU Wall to obtain and maintain such Workers' Compensation Insurance as is required by law. Such Workers' Compensation Insurance shall contain a waiver of subrogation rights against the Association and its managing agent. Owner shall provide certificates to the Association evidencing that the required insurance is in force before having their contractors and/or subcontractors perform any work on the Glass Wall System or CMU Wall.

7) Mechanic's Liens. Owner agrees and promises that, if any notice of mechanic's lien or any other lien whatsoever, stemming from the construction of the Glass Wall System or CMU Wall is filed or recorded against any property belonging to Association, then Owner shall cause, at its sole expense, said lien to be removed or shall provide and record a release bond from a bonding company approved by Association. If Owner fails to remove or bond around any such lien within said twenty (20) day period, then Association may, but shall not be required to, remove said lien itself, in which case Owner shall promptly reimburse Association for its reasonable costs and expenses incurred in doing so upon Association's written demand for such reimbursement.

8) Indemnity and Hold-Harmless. To the furthest extent allowed by law, Owner shall indemnify, defend, and hold harmless the Association and its officers, directors, members, employees, agents, and representatives from any and all obligations, liability, liens, claims, demands, losses, damages, costs, or causes of action whatsoever (collectively, "Liability"), including reasonable attorneys' fees, arising from or related to the existence, use, design, construction, maintenance, or replacement of the Glass Wall System or CMU Wall unless the Liability has been caused by the gross negligence or willful misconduct of the Association.

9) Binding upon Successors. Upon each transfer of Owner's Residential Lot and without any further action by any party, the respective rights and privileges of each party to this Agreement shall inure to the benefit of their respective Successors with the same force and to the same extent as the party, and the duties and obligations of each party to this Agreement shall bind their respective Successors with the same force and to the same extent as the party. The parties agree that this Agreement shall be enforceable as a covenant running with the land or as an equitable servitude, or both, as applicable.

10) No Adverse Action. The Association and Owner agree that no action or inaction shall transform this Agreement into an irrevocable agreement.

11) Revocation and Survival of Terms. If the Owner or, if Owner no longer owns the Residential Lot, Owner's Successors fail to perform any duty set forth in this

Agreement or otherwise breaches any term of this agreement, the Board on behalf of the Association may revoke the consent of Association set forth in Paragraph 1, above, upon providing ten (10) days' prior written notice to the persons or entities then listed by the San Diego County Tax Assessor as the Owner of the Residential Lot. Upon revocation of the consent of the Association set forth in said Paragraph 1, Owner or, if Owner no longer owns the Residential Lot, Owner's Successors shall remove the Glass Wall System and replace it with fencing of like-kind to that existing before this Agreement was entered into. Upon revocation of the consent of the Association set forth in said Paragraph 1, all other provisions of this Agreement shall survive such revocation and remain in force unless and until they are terminated.

12) No Alteration of Declaration. The Association and Owner agree that no provision in this Agreement alters, amends, or modifies the Declaration or any other Association governing document.

13) Limitation of Parties. If any litigation is commenced between the Association and Owner, or any of their Successors, concerning the provisions of this Agreement or its breach, Owner agrees and promises for himself, herself, or itself and their respective Successors that litigation or other dispute resolution proceedings shall be brought solely against the Association and not against any past, present, or future director, officer, agent, or employee of the Association and that Owner and its Successors waive any right they may have to litigate, arbitrate, or seek any other kind of dispute resolution against any past, present, or future director, officer, agent, or employee of the Association.

14) Enforcement. The parties acknowledge that the rights granted herein are of a special and unique kind and that, if either party were to breach any provision of this Agreement, the other party would not have an adequate remedy at law. Therefore, in addition to the remedies at law, this Agreement may be enforced, without limitation, by an action for equitable relief as provided under the laws of the State of California.

15) No Waiver. No delay in pursuing any remedy or in insisting upon full performance for any breach or failure of any covenant, condition, or promise under this Agreement shall prevent any party from later pursuing any remedies or insisting upon full performance for the same or any similar breach or failure.

16) Attorneys' Fees and Costs. In the event legal proceedings are commenced regarding the enforcement of this Agreement, the prevailing party in any such action shall recover, in addition to any relief granted therein, reasonable attorneys' fees and costs from the other party or parties, which fees and costs shall be included in any judgment rendered in such proceedings.

17) Entire Agreement; Amendment. This Agreement sets forth the entire understanding and agreement of the parties with respect to all matters discussed herein and supersedes any and all prior agreements, written or oral, regarding such matters. The provisions hereof may not be changed or modified except by an instrument in

writing, signed by the parties hereto and recorded in the Official Records of the County of San Diego.

18) Severability. If any term, provision, covenant, or condition of this Agreement is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, and covenant shall be valid and enforceable to the fullest extent permitted by law.

19) Authority. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this document. The signature of each undersigned person shall be acknowledged before a notary public and memorialized with an acknowledgment attached to this Agreement. Owner agrees that Owner shall not transfer any interest or title, including any equitable title, in Owner's Residential Lot before this Agreement is recorded.

20) Counterparts. This Agreement may be executed in counterparts. When each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one Agreement. No counterpart shall be effective until all parties hereto have executed and exchanged an executed counterpart hereof, and it has been recorded as provided for in Paragraph 21, below. The text of the Agreement and the signature and acknowledgment pages of such counterparts may be assembled to form a single, compiled document for recording.

21) Effective Date. This Agreement shall be effective upon the date it is recorded in the Official Records of San Diego County in the Office of the County Recorder.

IN WITNESS WHEREOF the parties have duly executed this Agreement.

“Owner”

Dated: _____
Enter Name of Owner with Trust Information if Applicable

Dated: _____
Enter Name of Owner with Trust Information if Applicable

"Association"

Encinitas Ranch Community Association,
a California nonprofit mutual benefit corporation

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

EXHIBIT A

(Legal Description of Residential Lot)

Enter Legal Description

APN: *Enter Assessor's Number*

