

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

**CITY OF MISSION VIEJO
DEPARTMENT OF PUBLIC SERVICES
ATTN: W. KEITH RATTAY
200 CIVIC CENTER
MISSION VIEJO, CALIFORNIA 92691**

Recording Fee: Exempt
(Government Code - Section 27383)

(Space above this line for Recorder's use)

**MAINTENANCE AGREEMENT
FOR
MISSION VIEJO, CALIFORNIA**

, (“Owner”), which has ownership over that certain real property located in the City of Mission Viejo, County of Orange, State of California, described as ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF MISSION VIEJO, DESCRIBED AS , also described as , Mission Viejo, California 9269 , Assessor’s Parcel Number , (“Property”) does hereby agree as follows:

Long Term Maintenance Program. Proper routine maintenance is required in accordance with all City ordinances. The long-term maintenance of any Best Management Practices shall be the responsibility of Owner. The Owner and any tenant, renter, lessee, etc., shall comply with the Best Management Practices (“BMPs”) contained in the document titled “Best Management Practice Requirements” attached hereto as Exhibit A.

Owner shall maintain the Property in substantial conformance with City ordinances and approved landscape and site plans, unless prior written approval is obtained from the City of Mission Viejo. Owner shall not allow the Property, including but not limited to exterior landscape material, furniture, fixtures, lighting, paint, hardscape, walls, and signage, to deteriorate beyond reasonable wear and tear. Owner agrees to an annual Property inspection by the City of Mission Viejo. This inspection shall include reviewing approved landscape and site plans to ensure the entire Property is maintained in accordance with City ordinances and approved plans, and landscaping is maintained according to industry horticultural and arboricultural practices.

In the event plant material on the Property is found dead, removed, altered, or poorly maintained, or in the event the Property, including but not limited to exterior landscape material, fixtures, lighting, paint, hardscape, walls, and signage, except site furniture, has been altered, poorly maintained, or damaged, the Owner will have three (3) months from the time of field review to replace, repair, or restore the designated items found by the City to be deficient. The Owner will have 30 days to replace or repair the designed furniture items found by the City to be deficient.

Annual Maintenance Program Documentation. The Property Owner, as part of the approval process, shall submit an annual maintenance program. The specific elements of the program shall be included in the annual maintenance program as outlined in Exhibit A of this Agreement.

City Right to Perform Required Maintenance. Owner agrees that failure to perform general maintenance in accordance with this Agreement or that failure to replace, repair, or restore the designated items on the Property found to be deficient by the City within the timelines specified by this Agreement shall constitute a “nuisance condition” on the Property. If the City of Mission Viejo declares a nuisance condition exists on the Property, the City or its designated agent or employee shall have the power, but not the duty, to enter the Property to perform the work or make the appropriate repairs to remedy the nuisance. Owner shall be financially responsible for all costs incurred by the City related to the performance of such work and agrees to pay such costs to the City upon demand.

Prior to undertaking such work, the City shall provide written notice and inform the Owner of any nuisance condition. The City shall give Owner a reasonable time period in which to remedy any designated items causing non-compliance with this Agreement. The City shall not undertake any work or repairs until after the time period specified in the notice has expired.

If Owner fails to pay, upon demand, the cost of any work performed by the City pursuant to this section, the City may specially assess the costs against the parcel of land upon which the project is located pursuant to the City’s authority under its nuisance ordinance. The assessment may be collected at the same time and in the same manner as ordinary County taxes.

In the event that the City performs any work or repairs on the Property, Owner agrees to and shall defend, indemnify, protect and hold harmless the City, its elective and appointed boards, officers, officials, employees, agents and volunteers from and against any and all claims, demands, losses, defense costs, fines, penalties, expenses, causes of action and judgments of law or in equity, or liability of any kind or nature which the City, its elective and appointed boards, officers, officials, employees, agents and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to Property arising out of the City’s performance of such work, excepting only liability arising solely out of gross negligence of the City.

1. Enforcement Options. The obligations of Owner under the terms of this Agreement are part of the conditions of approval of the project, and the City may enforce the terms of this Agreement through the enforcement mechanisms available to it.

2. Agreement Runs With Land. The obligations and restrictions under this Agreement shall run with the land and be binding on all heirs, assignees and successors in interest.

3. Relation of Agreement to Site Plan. This Agreement does not supersede or supplant any condition of approval of the project.

4. Binding Effect. The obligations under this Agreement shall be binding upon the heirs, executors, administrators, successors, assigns and all agents of Owner, including, but not limited to, any property management agent for the project designated by Owner.

5. Notice. Whenever it shall be necessary for either party to serve notice on the other regarding this Agreement, such notice shall be served by personal service or certified mail,

postage prepaid, return receipt requested, addressed as follows unless and until different addresses may be furnished in writing by either party to the other.

If to Owner:

Attention:

If to City: City of Mission Viejo
200 Civic Center
Mission Viejo, California 92691
Attention: City Manager

With a copy to: William P. Curley III, Esq.
Lozano Smith
Attorneys at Law
515 South Figueroa, Suite 750
Los Angeles, California 90071

Notice shall be deemed to have been served on the day of personal service or seventy-two (72) hours after the same has been deposited in the United States Postal Service. This shall be valid and sufficient service of notice for all purposes.

1. Waiver. Waiver by any parties hereto of any term, condition or covenant of this Agreement shall not constitute the waiver of any other term, condition or covenant hereof.

2. Governing Law. This Agreement shall be interpreted and construed according to the laws of the State of California.

3. Notification of Change in Ownership. The City shall be notified of any change of ownership of the project.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year indicated below.

OWNER:

Name:
Title:

Name:
Title:

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____, before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**EXHIBIT A
TO
MAINTENANCE AGREEMENT**

**BEST MANAGEMENT PRACTICES REQUIREMENTS FOR THE
ANNUAL MAINTENANCE OF PROPERTY IN THE CITY OF MISSION VIEJO**

1. **Annual Maintenance.** The Property Owner shall submit an annual maintenance program document that shall clearly spell out routine intervals for the following items:
 - a. **Litter Control.** The Owner will be required to implement trash management and litter control procedures in the common areas aimed at reducing pollution of stormwater. The Owner may contract with its landscape maintenance firm to provide this service with the regularly scheduled maintenance, which should consist of litter patrol, emptying of trash receptacles in common areas, and noting trash disposal violations and reporting the violations to the Owner for investigation. The following is a more detailed list of what needs to be reflected in the program document:
 - i. **Trash Collection.** Minimum daily for onsite trash receptacles.
 - ii. **Trash Enclosures.** Trash enclosures shall be swept out on an every-other-day basis to prevent trash collection from building up.
 - iii. **Trash Enclosure Doors.** Trash enclosure doors shall remain closed at all times unless trash dumpsters are being emptied.
 - iv. **Trash Removal.** The Property Owner shall include daily inspection of the site including landscape beds and ensure that all trash is collected and placed in trash receptacles at the close of business day.
 - b. **Site Furniture.** Site furniture shall be kept in working order or replaced within 30 days. Torn, ripped, or faded umbrellas shall be replaced within 30 days.
 - c. **Landscape Maintenance.** Landscape maintenance shall be performed by a state-licensed landscape contractor. At a minimum, the following criteria and elements shall be included in the routine maintenance document:
 - i. **Tree Trimming.** All trees shall be trimmed on a routine basis in accordance with industry horticultural and arboricultural practices. No trees on site shall be topped, pollarded, or disfigured. Trees found in this condition shall be replaced within three months of notice received from the City of Mission Viejo. No tree shall be trimmed due to blocking of views or on-site signage.
 - ii. **Shrub Trimming.** Shrubs shall be trimmed on a routine basis throughout the maintenance year so as to maintain their intended and approved design use. Shrubs that have either been excessively trimmed and no longer fulfill the intended use of the plant shall be removed and replaced within three months upon receiving notice from the City of Mission Viejo.

- iii. **Turf Maintenance.** All turf grass shall be mowed on a weekly basis to maintain a neat appearance. All turf shall be fertilized following industry standards to maintain a consistent green appearance.
 - iv. **Irrigation Maintenance.** The Property Owner shall retain a licensed landscape contractor to maintain the irrigation system as it was approved by the City of Mission Viejo. Irrigation systems shall be turned on weekly, and the Property Owner shall require the contractor to walk the entire site to ensure that the irrigation system is functioning as designed and that all irrigation deficiencies are corrected within a 36-hour time period. The City will monitor irrigation performance to ensure runoff is reduced to the lowest level possible.
 - v. **Scheduling.** The Property Owner shall prepare an annual irrigation schedule based on the local evapotranspiration rates (annual rain fall). This information can be found on the City website at (www.cityofmissionviejo.org/green) or the Metropolitan Water District of Southern California's website (www.bewaterwise.com). The URL addresses were current at the time this document was revised.
 - vi. **Weed Abatement.** The Property Owner shall keep the planting beds, asphalt parking lot, and concrete sidewalks free of weeds. Weeds in planting beds shall be monitored and pulled on a weekly basis. Sidewalks and parking lot areas shall be sprayed with non-toxic, non-polluting chemicals on a six-month basis.
 - vii. **Mulching of Planting Beds.** The Property Owner shall include as part of the contract with the licensed landscape contractor that all planting beds get mulched on a 2-3 times per year basis with a minimum of 2" layer of shredded mulch.
2. **Employee Training.** The Owner shall prepare a training manual(s) for existing and future employees. The manual should include daily inspections of the site to ensure trash collection is a top priority and that fronts and rears of stores are kept clean at all times without exception.
 3. **Contact information.** The Property Owner shall provide the City an updated list annually of all on-site emergency numbers and contacts for the property manager and the licensed landscape contractor.
 4. **Lot Sweeping.** The Owner must sweep outdoor lots regularly (minimum monthly) and prior to the storm season (no later than October 1 each year). Sweeping shall be done with a vacuum-type sweeper. Under no circumstances are outdoor areas/lots to be rinsed or washed with water unless said rinse/wash water is collected and disposed of properly (i.e., into the sewer).

Business Name:

**CITY OF MISSION VIEJO
FINAL LANDSCAPE INSPECTION AND CONTACT INFORMATION
PUBLIC SERVICES DEPARTMENT**

The Public Services Department, in a continuing effort to provide the highest quality of product to the community, is requesting the following information. Additionally, the final statement on the bottom of the page needs to be signed by a legal agent of the Property Owner giving credible and reliable information.

Emergency Contact Information

The following information will be used for follow-up inspections with the City, as well as during a city emergency when the City would need to contact the Property Owner.

BUSINESS NAME: _____

PROPERTY OWNER: _____

PROPERTY OWNER TELEPHONE NUMBERS: DAYTIME: _____

AFTER HOURS: _____

PROPERTY OWNER OFFICE ADDRESS: _____

PROPERTY OWNER FAX NUMBER: _____

PROPERTY OWNER EMAIL ADDRESS: _____

Annual Inspections

The City will conduct annual inspections of your site and landscape improvements. The purpose of the inspections is for the City to ensure that the irrigation system and landscape is maintained in a viable and healthy condition and that the plan remains consistent with the approved plans on file with the City and as approved by the Planning Commission. The following items will be reviewed annually during the inspection.

1. Irrigation system shall be turned on and inspected to ensure that replacement nozzles, heads, and coverage are maintained.
2. Plant material will be reviewed to ensure that trees are trimmed according to arboricultural practices and not topped, that plant material is being allowed to grow according with the approved plans, and that plant material is not being removed or substantially modified without prior approval from the City of Mission Viejo.
3. Site furniture, pottery, and trash receptacles shall be maintained and replaced on a routine basis to maintain the quality of environment that is being accepted on this final walkthrough day of _____.

I have read the information above and understand that I will meet with the City on an annual basis to review the site and agree to keep the improvements approved by the City of Mission Viejo on the date above in accordance with the approved plans and final inspection by the City of Mission Viejo.

PROPERTY OWNER:

Name:

Title:

Date