

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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Space Above for Recorder's Use

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APN No. \_\_\_\_\_

**MAINTENANCE AND INDEMNITY AGREEMENT  
PURSUANT TO SEAGATE VILLAGE COMMUNITY  
ASSOCIATION'S DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**MAINTENANCE AND INDEMNITY AGREEMENT**  
**PURSUANT TO SEAGATE VILLAGE COMMUNITY ASSOCIATION'S**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This agreement and covenant (Running with the Land) (hereinafter "Covenant") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between SEAGATE VILLAGE COMMUNITY ASSOCIATION (hereinafter called the "Association"), and **[Insert full names of owners per latest grant deed]** (hereinafter called the "Owner"). Both Association and Owner may sometimes be collectively referred to as the "Parties."

**RECITALS:**

A. Owner owns the real property commonly known as **[Insert street address and unit number of Unit]** in the City of Encinitas, County of San Diego, State of California (the "Subject Property"), more particularly described in the legal description attached as Exhibit "A," which is incorporated herein by this reference. The A.P.N. number for the Subject Property is \_\_\_\_\_. Owner has the authority to record the instant restrictive covenant against the Subject Property, which is part of the Association.

B. The Subject Property is encumbered by and subject to the Association's Governing Documents, as defined in California Civil Code Section 4150, including the Declaration of Covenants, Conditions, and Restrictions for Seagate Village Community Association filed in the San Diego County Recorder's office on September 28, 1982 as Document No. 82-299487, together with any amendments that may be adopted or recorded thereafter (hereinafter collectively called the "CC&Rs").

C. The Association is a nonprofit mutual benefit corporation organized and existing under the laws of the State of California, established and incorporated as part of a general plan to provide for the management, protection, maintenance, preservation, operation, development and control of the real property (the "Common Area"), the Subject Property and other Units located in the Seagate Village community.

D. The Association maintains and controls areas within the development, hereinafter referred to as the "Common Area," as such is defined in Article I, Section 1.6 of the CC&Rs and paragraph 2 of the Condominium Plan(s) as "the entirety of each Project except the Units in each such Project, and without limiting the generality of the foregoing, specifically including all structural projections within a Unit which are required for the support of a Condominium Building, gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the structures wherever located (except the outlets thereof when located within Units), the land upon which the structures are located, the air space above these structures, all bearing walls, columns, floors, the roof, the slab foundation, common stairways, window glass and the like."

E. Pursuant to Article VIII, Section 8.25(a) of the CC&Rs, "[E]ach Owner of a Condominium shall, subject to the terms and provisions of this Declaration, including, but not limited to, those provisions pertaining to maintenance and repair by the Association and the Article

hereof entitled “Architectural and Landscaping Control,” and subject also to the terms and provisions of any Supplementary Declaration recorded in accordance with the terms and provisions of Article II . . . maintain, repair, replace and restore the glass doors, if any, and windows (including window screens and cleaning the interior and exterior of the windows) enclosing his Unit.”

F. Pursuant to Article VII, Section 7.2 of the CC&Rs, “[N]o fence, wall, building, sign or other structures (including basketball standards) or exterior addition to or change or alteration thereof (including painting) or landscaping, shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the R-1 Property, or any portion thereof, until plans and specifications shall have been submitted to and approved in writing by an architectural committee” (hereinafter “ARC”).

G. Owner wishes to install windows (hereinafter referred to as the “Improvement”) in the Subject Property pursuant to the architectural application submitted to and approved by the Association’s Board of Directors or ARC in accordance with Article VII of the CC&Rs.

H. The Association has agreed that Owner shall be granted permission to install the Improvement, subject to the agreement to assume in perpetuity all maintenance responsibilities for the Improvement pursuant to the terms and conditions contained in this Covenant.

I. Owner and Association intend to fix and determine the rights and obligations of the Parties and their successors-in-interest with respect to the design, construction, installation, maintenance, use, and repair of the Improvement, and in consideration thereof have entered into this Covenant.

J. Owner and Association intend that this Covenant be made and entered into pursuant to the provisions of Cal. Civil Code Section 1468, in effect as of the effective date of this Covenant, and that this Covenant shall run with the land of Owner and that it shall be binding upon each successive owner of the Subject Property during their ownership of any portion of the land affected hereby, and upon each person having any interest in the land derived through any owner thereof.

NOW, THEREFORE, in consideration of the terms and conditions herein, Owner and Association hereby agree as follows:

1. Pursuant to the Articles of Incorporation, CC&Rs, Bylaws and Rules and Regulations (“Governing Documents”) for the Association, Owner desires to obtain permission from the Board of Directors and/or ARC for the Association for the installation of windows in the Subject Property as more particularly set forth in the approved application which is attached hereto as Exhibit “B” to this Covenant. The Association agrees to grant such approval consistent with the terms and conditions set forth herein and Exhibit “B.”

2. Owner further agrees that the covenants provided herein shall run with both the land owned by Owner and shall be binding upon each successive owner, during such successor's ownership of any portion of the land affected by this Covenant, and upon each person having any interest in such land and derived through any owner thereof; further, that the successive owners of the land are to be bound by the covenants provided herein. For so long as this Covenant is in effect, Owner shall maintain insurance at his or her sole cost to cover any and all Owner obligations and/or potential

liabilities under this Covenant arising out of or related in any manner to the installation, use and/or maintenance of the Improvement.

3. Owner, on behalf of his heirs, successors in interest, guardians, executors, devisees, administrators, lessees, tenants, invitees, guests, encumbrances, donees, grantees, mortgagees, licensors and assignees, hereby agrees to install, maintain, remove and make necessary repairs to said Improvement as dictated and at the sole discretion of the Association. Owner shall require approval from the Association for any alteration to the Improvement. Owner agrees to assume this maintenance and repair responsibility in perpetuity, and this Covenant shall be appurtenant to and pass with legal title for the Subject Property. The Association shall be released from any obligations relating to the installation, maintenance or use of the Improvement. Owner shall have the sole obligation to disclose the existence of this Covenant and its terms to any successor. Owner further agrees to be responsible for obtaining or failing to obtain, any necessary licenses and permits and for complying or failing to comply with any applicable Federal, State, County and Municipal laws, codes and regulations in connection with the installation, maintenance, use and/or repair of the Improvement. Prior to installation, Owner or its agent shall confirm that the size and weight of the overall Improvement will not adversely impact upon the structural integrity of the Common Area walls or any other structural components.

4. Owner shall defend, indemnify and hold harmless the Association, its Directors, Officers, Members, Committee Members, Managers and Agents from any liabilities, claims, liens for materials or labor, demands or legal action of any kind, including but not limited to property damage and/or personal injury, which arises out of or relates in any manner to the purchase, construction, installation, removal, maintenance and/or use of the subject Improvement and any portion of the Common Area on which the Improvement exists if such liabilities, claims, demands or legal actions are related to the installation, maintenance, use, repair and/or removal of the Improvement. This indemnification shall survive the termination of this Covenant.

5. Owner further agrees and acknowledges that by granting approval of the Improvement, the Association has no responsibility or liability for maintenance or repair of the Improvement and that Owner shall have full responsibility and liability for the proper installation, maintenance, use, repair and removal of the Improvement. In addition, Owner shall be responsible for any damage to the Common Area or Units arising out of or related in any manner to the installation, use and/or maintenance of the Improvement. The Association's Governing Documents will continue to apply in full force and effect to the portion of the Common Area to which the Improvement will be attached and/or installed, and Owner shall further be required to abide by the Association's Governing Documents in all respects.

6. Owner shall reimburse the Association upon demand for any damages, losses, costs and judgments, including all increased insurance costs to the Association, resulting to the Association from the design, construction, installation, maintenance, use, or repair of the Improvement. Also, Owner shall make sure that upon completion of the work there are no mechanic liens in place for either labor or materials, and Owner shall obtain the necessary unconditional lien releases in favor of the Association and all affected owners.

7. Owner shall be responsible for the quality and frequency of said maintenance of the Improvement. The Association, through its Board of Directors and/or ARC shall have the power to

tell Owner to undertake maintenance, repairs and/or removal if in their opinion such maintenance, repairs and/or removal are required. In the event Owner receives a written request from the Board of Directors, or its authorized Agent, to perform maintenance, repairs or removal, such work must be completed within sixty (60) days of receipt of such request. Owner shall bear all costs and expenses associated with the maintenance, repair and removal of the Improvement. If this work is not timely performed, or if the work is not performed in a reasonable manner such that it addresses all of the deficiencies noted, the Association shall have the right to demand the immediate and complete removal, at any time, at the sole expense of Owner, of the Improvement and declare the approval granted herein to be completely rescinded and of no further force and effect.

8. This Covenant may be amended only by a writing signed by all Parties. In the event that any party to this Covenant shall be required to commence any action against any other party by reason of any breach of any provision of this Covenant, or to seek a judicial declaration of rights hereunder, the party prevailing in such action shall be entitled to recover from the other party the prevailing party's actual attorney's fees and costs, whether or not the proceeding or action proceeds to judgment. Compliance with California Civil Code Section 5925, *et seq.* shall NOT be a condition precedent to initiating any lawsuit under this Covenant. Any action to enforce this Covenant shall be maintained in San Diego Superior Court.

9. This document shall be recorded and is intended to be appurtenant to legal title for the Subject Property. Owner agrees to fully and expressly disclose this Covenant as part of any transfer prior to the close of escrow.

10. Owner acknowledges and agrees that this Covenant shall not serve to transfer or convey to Owner sole fee ownership of any portion of the Common Area or transfer any rights other than those enumerated herein.

11. Owner agrees to cooperate in the recordation of this Covenant and assist the Association in processing any additional changes to this Covenant in order to properly record this Covenant with the County of San Diego.

12. The covenants contained in this Covenant shall be deemed separate, distinct and severable covenants between Owner and Association as to the Subject Property.

13. If any provision or part of this Covenant is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

14. Any and all damages, costs, judgments, attorneys' fees and expenses incurred by Association as a result of the design, construction, installation, maintenance, use, or repair of the Improvement by Owner, or Owner's failure to comply with any of Owner's obligations under this Covenant, may be assessed against the Subject Property by levy of a Special Assessment by Association solely for this purpose in the manner provided by the CC&Rs, which is incorporated herein by reference.

15. This Covenant is made in, and shall be construed in accordance with, the laws of the State of California.

16. This Covenant may be executed in counterparts, and shall have the same force and effect as though it had been executed as one original signature page.

17. This Covenant shall be effective upon its execution by Owner and Association and its recordation in the Office of the County Recorder, County of San Diego, State of California.

IN WITNESS WHEREOF, the undersigned have executed this Covenant on the date above first written.

**[INSERT FULL NAMES OF OWNERS PER LATEST GRANT DEED]** (“OWNER”)

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

SEAGATE VILLAGE COMMUNITY ASSOCIATION (“ASSOCIATION”)

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE §1189**

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 ) ss.

County of San Diego )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date Here Insert Name and Title of the Officer  
personally appeared \_\_\_\_\_,  
Name(s) of Signer(s)

\_\_\_\_\_ 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 \_\_\_\_\_  
Signature of Notary Public

Notary Seal

\_\_\_\_\_  
Description of Attached Document:  
Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_

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\_\_\_\_\_,  
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.

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WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

Notary Seal

\_\_\_\_\_  
Description of Attached Document:  
Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_



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Signature of Notary Public

Notary Seal

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