

Recording Requested By:

DRAFT
3-9-20

After Recording Return To:

**DECLARATION OF RESTRICTIONS AND AGREEMENT FOR
MAINTENANCE OF PRIVATE ROADWAY**

This Declaration of Restrictions and Agreement for Maintenance of Private Roadway ("Declaration" or "Agreement") is made this _____ day of _____, by Jacob Friedman ("Declarant").

Recitals

A. Declarant is the owner of certain real property situated in the City of San Rafael, County of Marin, State of California, commonly known as Marin Assessor's Parcel 12-141-59 and more particularly described as "Parcel One" in Exhibit "A" attached hereto and incorporated by reference ("Lot 59").

B. Declarant is also the owner of certain real property situated in the City of San Rafael, County of Marin, State of California, commonly known as Marin Assessor's Parcel 12-141-60 and more particularly described as "Parcel Two" in Exhibit "A" attached hereto and incorporated by reference ("Lot 60"). Lot 59 and Lot 60 are sometimes collectively referred to as "the Property."

C. Lot 59 and Lot 60 front on, and have access rights over, a 40 foot wide street known as Ross Street Terrace, which starts at Ross Street and extends in a northerly direction to and across the frontage of Lot 59 and Lot 60 ("Ross Street Terrace Easement").

D. As part of the development of Lot 59 and Lot 60, Declarant intends to construct certain private roadway improvements within the Ross Street Terrace Easement as generally shown in Exhibit "B" attached hereto and incorporated by reference ("Private Roadway Improvements").

E. Declarant desires and intends to provide for the maintenance and repair of the Private Roadway Improvements by itself and the future owners of the Property, and any other property that uses the Private Roadway Improvements.

Agreement

NOW, THEREFORE, Declarant declares that said Property shall be held, transferred, encumbered, used, sold, conveyed, leased, and occupied, subject to the covenants and restrictions hereinafter set forth expressly and exclusively for the use and benefit of said Property and each and every person or entity who now or in the future owns any portion or portions of said real property. All such covenants and restrictions shall constitute covenants which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property, or any part thereof, and shall inure to the benefit of the Property, or any part thereof, and shall inure to the benefit of the Property and the owners thereof.

1. **Maintenance and Repair of Private Roadway Improvements.** Declarant, for itself and for the future owners of Lot 59 and Lot 60, agrees that the Private Roadway Improvements shown in Exhibit "B" shall be maintained and repaired and kept in good condition and repair, which shall include, but not be limited to, the following:

- (a) The maintenance and repair of the road surface and shoulders as necessary so that the road surface and shoulders are kept in good condition and repair;
- (b) Cleaning, repair, and maintenance of storm drains, gutters or other drainage structures located under and adjacent to the road surface; and
- (c) Maintenance and repair of any retaining walls located adjacent to the roadway that are integral to the roadway.

2. **Responsibility for Maintenance of Private Roadway Improvements.**

(a) Each owner of a lot shall pay a share of the costs and expenses for maintenance of the Private Roadway Improvements identified in Paragraph 1 above according to the following schedule: The owner of Lot 59 shall be responsible for one-half of all costs of maintaining the Roadway Improvements and the owner of Lot 60 shall be responsible for one-half of all costs of maintaining the Roadway Improvements. The owners of Lots 59 and 60 reserve the right, pursuant to California Civil Code Section 845, to seek contribution for maintenance costs from all holders of easements over Ross Street Terrace.

(b) Notwithstanding the foregoing, if any owner or permittee of such owner causes any damage to the Private Roadway Improvements or the other properties in connection with its use of the easement area, such owner ("Damaging Owner") shall repair the improvements within the easement area or the damaged property to the condition that existed prior to the infliction of damage, at Damaging Owner's sole cost and expense.

3. **Maintenance by Additional Lots Fronting on Ross Street Terrace.** In addition to Lot 59 and Lot 60, there are other parcels of real property fronting on the portion of Ross Street Terrace from Ross Street up to Declarant's Property. These parcels are identified as follows ("Additional Lots"):

<u>Marin Assessor's Parcel</u>	<u>Lot</u>
12-141-03	03
12-141-45	45
12-142-19	19
12-142-25	25
12-142-33	33

Currently, none of the Additional Lots utilize Ross Street Terrace for access. If, in the future any of the Additional Lots seek to develop access off of, or from, Ross Street Terrace thereby utilizing the Private Roadway Improvements for access, the owner of any such Additional Lot must either join in this Agreement as provided herein, or pay its proportionate share of maintenance costs pursuant to California Civil Code Section 845 which provides in part:

"(a) The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair.

(b) If the easement is owned by more than one person, or is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or the owners of the parcels of land, as the case may be, pursuant to the terms of any agreement entered into by the parties for that purpose. In the absence of an agreement, the cost shall be shared proportionately to the use made of the easement by each owner."

The owners of the Additional Lots may join in this Agreement by executing and recording a Consent to Declaration of Restrictions in the form attached as Exhibit "C." If the owners of the Additional Lots, or any of them, consent in writing to join in this Agreement, the costs of maintenance of the Private Roadway Improvements identified in paragraph 1 shall be paid proportionate to use.

4. Reimbursement for Construction of Private Roadway Improvements.

Declarant, for itself and its successors and assigns, reserves the right to seek reimbursement from the owners of the Additional Lots who in the future seek to develop access off of, or from Ross Street Terrace for all costs Declarant incurred to construct the Private Roadway Improvements.

5. Assessment. The owners of the Property shall assess themselves as necessary for the costs of maintenance of the Private Roadway Improvements or any portion thereof. Except in the case of emergency repairs, an assessment for maintenance shall occur when the owners of two (2) or more of the lots that are responsible for the maintenance to be done, as set forth in Section 2, determine that the Private Roadway Improvements or any portion thereof needs maintenance. On such determination, written notice shall be provided to all of the owners describing the maintenance, the party that will perform the maintenance, the estimated cost of the repairs, and the allocation of the costs among the owners (the "Repair Notice"). If one or more of the owners of lots that are responsible for the maintenance to be done, object to any matter contained in the Repair Notice, the objecting owners shall notify the other owners in writing setting forth the reasons for the objection. If no such objection is received within the 15 day period following receipt of the Repair Notice, all owners shall be conclusively considered to have agreed to the maintenance and repair work performed and to pay their allocable share of the

maintenance and repair costs. If a timely objection is received, the owners responsible for the maintenance shall meet at a mutually agreeable location within the Property and attempt to resolve the dispute in good faith. A decision of a majority of the owners of parcels that are responsible for the maintenance shall control. If the dispute cannot be resolved within 15 days after the timely objection is received, any owner may initiate arbitration to resolve the dispute as described in Section 8 below.

Notwithstanding the foregoing, any owner has the authority to make any necessary emergency repairs. The repairs shall be limited to those needed to render the Private Roadway Improvements safe for use by vehicles and pedestrians. The owner making the repairs shall notify the other owners as soon as is reasonably possible. Emergency repairs shall be paid for according to the schedule in Section 2.

For purposes of determining a majority, there shall be one vote for each lot that is responsible for maintenance. If any lot has two or more owners, the vote cast by one owner is conclusively presumed to be the vote cast by all owners of the lot.

6. **Payment Due Dates.** The owner supervising the maintenance work shall prepare and submit a statement to all owners that describes each lot's allocable share of the maintenance costs (the "Payment Statement"). Payment shall be due within 30 days after receipt of the Payment Statement unless the owners responsible for the maintenance agree otherwise and shall be in default if not paid in full within the required time. If payment is not made on or before the due date, interest shall accrue on the unpaid balance at the rate of 12% per annum (but not to exceed the maximum rate permitted by law) until paid in full. For purposes herein, the "owner supervising the maintenance" shall be the owner designated by a majority of the owners; or, if no owner is so designated, the supervising owner shall be the owner or owners that sent the initial Repair Notice.

7. **Payment Default and Remedies.** If any owner fails to pay the amount due on the Payment Statement within 30 days of the receipt thereof (the "Defaulting Owner"), any other owner may bring an action in any court of appropriate jurisdiction for breach of the personal obligation to pay a proportionate share of the maintenance costs and in such action shall be entitled to recover the amount due and any interest accrued thereon, all costs of such action and reasonable attorneys' fees.

The non-defaulting owners covenant to contribute a proportionate share of any amount needed to cover any default and any related costs, including costs and attorneys' fees incurred in order to recover from the Defaulting Owner. Any payments received from the Defaulting Owner, including interest, shall be distributed on a pro-rata basis among those non-defaulting owners that made contributions to cover the default and recovery costs.

8. **Arbitration of Disputes.** ANY DISPUTE OR CLAIM IN LAW OR EQUITY ARISING OUT OF THIS AGREEMENT SHALL BE DECIDED BY NEUTRAL BINDING ARBITRATION IN ACCORDANCE WITH PART 3, TITLE 9, OF THE CODE OF CIVIL PROCEDURE, AND NOT BY COURT ACTION, EXCEPT AS PROVIDED BY CALIFORNIA LAW FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT. THE ARBITRATOR SHALL BE A RETIRED SUPERIOR

COURT JUDGE OR A LICENSED CALIFORNIA ATTORNEY, OR ANY OTHER PERSON OR ENTITY MUTUALLY AGREEABLE TO THE PARTIES. THE LOSING PARTY SHALL PAY THE ARBITRATOR'S FEES. IN THE EVENT OF A DISAGREEMENT AS TO THE SELECTION OF AN ARBITRATOR, THE PRESIDING JUDGE OF THE SUPERIOR COURT HAVING JURISDICTION TO ENFORCE THE ARBITRATION AWARD SHALL SELECT THE ARBITRATOR. THE FOLLOWING MATTERS ARE EXCLUDED FROM ARBITRATION: (A) AN UNLAWFUL DETAINER ACTION; AND (B) ANY MATTER WHICH IS WITHIN THE JURISDICTION OF A PROBATE COURT OR SMALL CLAIMS COURT. THE FILING OF A JUDICIAL ACTION TO ENABLE THE RECORDING OF A NOTICE OF PENDING ACTION, FOR ORDER OR ATTACHMENT, RECEIVERSHIP, INJUNCTION, OR OTHER PROVISIONAL REMEDIES, SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT TO ARBITRATE UNDER THIS PROVISION.

9. **Attorneys' Fees.** In the event of any controversy, or claims of dispute relating to this Declaration or breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs.

10. **Term.** These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the Property has been recorded, agreeing to change said covenants in whole or in part.

11. **Limitation of Liability.**

(a) Nothing set forth in this Declaration shall constitute an agreement to share any liability resulting from personal injury or property damage arising out of or in connection with the use of the Private Roadway Improvements. Each lot owner hereto is responsible for maintaining their own liability insurance, if any.

(b) The liability of Declarant and the future owners of the Property for performance of any of the provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of the owner's entire interest in the Property with respect to obligations arising from and after the date of divestment.

(c) Each owner shall indemnify, defend, protect, and save the other owners harmless from and against any and all demands, liabilities, damages, expenses, causes of action, suits, claims, and judgments, including reasonable attorneys' fees (collectively "Claims"), arising out of, relating to, or in any way connected with the performance by the indemnifying owner or its permittees of the indemnifying owner's maintenance obligations hereunder.

12. **Mortgagee Protection.** Nothing herein shall be interpreted to render invalid any deed of trust or mortgage on any Lot.

13. **Covenants Running with the Land and Equitable Servitudes.** The covenants contained herein constitute covenants running with the land pursuant to the provisions of Civil Code Section 1468 and equitable servitudes that benefit and bind each Lot and each owner and

successive owner thereto and shall be effective automatically on the date that Declarant first transfers title to any dominant or servient tenement described herein regardless of whether the instrument of transfer describes these covenants.

14. **Amendments.** These covenants may be amended from time to time by the Lot owners. The amendment shall be in writing, shall be signed by all of the Lot owners and shall be certified by such owners that the amendment was duly adopted by the owners as required herein. The amendment shall be effective when recorded in the records of Marin County, California.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date and year first written above.

DECLARANT:

Jacob Friedman

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 MARIN

On _____, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 021-141-59 and 021-141-60

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN RAFAEL COUNTY OF MARIN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

BEING a portion of the lands conveyed to John G. MacPhee, Jr., by Deed recorded March 16, 1961 in Book 1444 of Official Records, at Page 582, Marin County Records and to Jack G. MacPhee by Deed recorded September 21, 1962 in Book 1613 of Official Records at page 396, Marin County Records, more particularly described as follows:

BEGINNING at the Westerly corner of the lands conveyed to Jack G. MacPhee recorded September 21, 1962 in Book 1613 of Official Records at page 396, Marin County Records, and running along the Southerly line South 68° 15' East 19.03 feet, thence leaving said Southerly line South 79° 39' 21" East 109 feet more or less to the Westerly line of Ross Street Terrace (formerly Buena Vista) as described and dedicated to public use in the Deed from James J. McDonald to Peter Williams, recorded in Book 3 of Deeds, at Page 360, Marin County Records, thence along said Westerly line South 9° 15' East, 21 feet, thence leaving said Westerly line North 85° 19' 38" West 54 feet; South 14° 55' 26" West 64 feet, more or less, to the Southerly line of the Deed to John G. MacPhee above referred to (1444 O.R. 582), thence along said Southerly line North 68° 47' 00" West 58 feet to the Southwesterly corner; thence along the Westerly line of said Deed North 11° 45' 00" 72.15 feet to the point of beginning.

BEING PARCEL 2 as shown upon the proposed subdivision approved and recorded November 26, 1963 in Book 1753 of Official Records, at Page 247, Marin County Records.

APN: 012-141-59

Parcel Two:

BEING A PORTION of the lands conveyed to John G. MacPhee, Jr., by Deed recorded March 16, 1961 in Book 1444 of Official Records, at Page 582, Marin County Records, and to Jack G. MacPhee, by Deed recorded September 21, 1962 in Book 1613 of Official Records, at Page 396, Marin County Records, more particularly described as follows:

COMMENCING at the Westerly corner of the lands conveyed to Jack G. MacPhee, recorded September 21, 1962 in Book 1613 of Official Records, at Page 396, Marin County Records, and running along the Southerly line South 68° 15' East 19.03 feet, thence leaving said Southerly line South 79° 39' 21" East 109 feet, more or less, to the Westerly line of Ross Street Terrace (formerly Buena Vista) as described and dedicated to Public use in the Deed from James J. McDonald to Peter Williams, recorded in Book 3 of Deeds, at Page 360, Marin County Records, thence along said Westerly line South 9° 15' East, 21 feet, to the true point of beginning, thence leaving said Westerly line North 85° 19' 38" West 54 feet; South 14° 55' 26" West 64 feet, more or less to the Southerly line of the Deed to John G. MacPhee above referred to, (1444 O.R. 582), thence along said Southerly line South 68° 47' 00" East 92 feet to the Southeasterly corner; thence along the Westerly line of Ross Street Terrace, North 11° 45' 00" 81.90 feet to the true point of beginning.

BEING PARCEL 1, as shown upon the proposed subdivision approved and recorded November 26, 1963 in Book 1753 of Official Records, at Page 247, Marin County Records.

EXHIBIT "A"
Legal Description

APN: 012-141-60

EXHIBIT "B"

(Diagram of Roadway Improvements)

EXHIBIT "C"

(Consent)