

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

CITY OF EL CAJON  
OFFICE OF THE CITY CLERK  
200 CIVIC CENTER WAY  
EL CAJON, CA 92020

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Above Space for Recorder's Use

STORM WATER FACILITIES MAINTENANCE AGREEMENT  
WITH EASEMENT AND COVENANTS

[Insert Project Reference Numbers (i.e. Engineering Reference Drawing, City Engineering Job Number, TSM, Final Map)]

This Agreement for the maintenance and repair of certain Stormwater Management Facilities is entered into between \_\_\_\_\_ (hereinafter referred to as "Owner") and the City of El Cajon (hereinafter referred to as "City") for the benefit of the City, the Owner, the successors in interest to the City or the Owner, and the public generally.

RECITALS

A. Owner is the owner of certain real property located in the City of El Cajon, California, more particularly described in Exhibit "A" hereto (hereinafter referred to as the "Property"), and has proposed that the Property be developed as \_\_\_\_\_ (insert brief description of type of project, e.g., "a 100 unit residential subdivision") \_\_\_\_\_ in accordance with applications for Tentative Map No. \_\_\_\_\_, Site Development Plan No. \_\_\_\_\_, Conditional Use Permit No. \_\_\_\_\_, which are on file with the City. This Agreement is required as a condition of approval for such development as set forth in Resolution Nos. \_\_\_\_\_.

B. In accordance with the City of El Cajon Urban Storm Water Runoff Regulations, El Cajon Municipal Code, Chapter 13.10 (the "Storm Water Management and Discharge Control Ordinance"), the El Cajon Standard Urban Storm Water Mitigation Plan ordinance contained in El Cajon Municipal Code Chapter 16.60 (the "SUSMP Ordinance"), the City of El Cajon Zoning Ordinance, the City of El Cajon Grading Ordinance and/or other ordinances or regulations of CITY which regulate land development and urban runoff, each as presently exist and as may be amended from time to time, Owner has prepared and submitted to City, a Storm Water Mitigation Plan (hereinafter the "SWMitP"), which is on file with City's Public Works Department. The SWMitP requires that storm water runoff from the Property be managed by the use of the following Storm Water Management Facilities which are identified in the SWMitP as "Best Management Practices" or "BMPs":

The precise location(s) and extent of the BMPs are indicated on the       (insert official name of plan or drawing)       dated       (insert date indicated on plan)       on file with City's Public Works Department as       (insert plan number)      . The SWMitP specifies the manner and standards by which the BMPs must be repaired and maintained in order to retain their effectiveness, as set forth in the Operation and Maintenance Plan (hereinafter "O&M Plan") which is attached hereto and incorporated herein as Exhibit "B".

C. The information contained in the SWMitP and Owner's representations that the BMPs will be maintained pursuant to the SWMitP, have been relied upon by City in approving Owner's development applications. It is the purpose of this Agreement to assure that the BMPs are maintained, by creating obligations, which are enforceable against the Owner and the Owner's successors in interest in the Property. It is intended that these obligations be enforceable notwithstanding other provisions related to BMP maintenance, which are provided by law. It is further intended that these obligations are to be covenants running with the land, which is described as the Property, and is binding on the Owner as well as Owner's successors in interest in the Property (all of whom shall be referred to as "Owner," or "Owners," herein).

## AGREEMENT

NOW, THEREFORE, for consideration of (a) City's approval of the above development applications and (b) the mutual covenants set forth herein, IT IS HEREBY AGREED AS FOLLOWS:

1. **Maintenance of Stormwater Management Facilities.** Owner agrees, for itself and its successors in interest, to all or any portion of the Property, to comply in all respects with the requirements of the Storm Water Management and Discharge Control Ordinance, the SUSMP Ordinance, and the SWMitP, all with regard to the maintenance of BMPs designated in the SWMitP, and in particular agrees to perform, at its sole cost, expense and liability, the following maintenance activities (collectively the "Maintenance Activities"): all inspections, cleaning, repairs, servicing, maintenance, record keeping, and other actions specified in the O&M Plan, with respect to all of the BMPs listed at Recital "B" above, at the times and in the manner specified in the O&M Plan. Owner shall initiate, perform and complete all Maintenance Activities at the required time, without request or demand from City or any other agency. Owner further agrees that Maintenance Activities shall include replacement or modification of the BMPs in the event of failure. Replacement shall be with an identical type, size and model of one or more BMPs, except that:

- (a) The City Engineer may authorize substitution of an alternative BMP if he or she determines that it will function as well as the failed BMP; and
- (b) Pursuant to section 13.10.070.C of the El Cajon Municipal Code, if the failure of the BMP, in the judgment of the City Engineer indicates that the BMP in use is inappropriate or inadequate to the circumstances, the BMP must be

modified or replaced with an upgraded BMP to prevent future failure in the same or similar circumstances.

2. **Notices.** Owner further agrees that it shall, prior to transferring ownership of any land on which any of the above BMPs are located, and also prior to transferring ownership of any such BMP, provide clear written notice of the above maintenance obligations associated with that BMP to the transferee. Owner further agrees to provide evidence to the City Engineer for the City that Owner has requested the California Department of Real Estate to include in the public report issued for the development of the Property, a notification regarding the BMP maintenance requirements described herein.

Notwithstanding any other provisions of this Agreement, and conditioned upon compliance of each and every covenant, term and condition of this Agreement, upon the sale, exchange or assignment by Owner of the Property or any portion thereof to a bona fide purchaser (or transferee) for value, Owner shall be and is hereby entirely released from all liability under any and all covenants and obligations contained in or derived from this Agreement, or arising out of any act, occurrence or omission relating to the Property (but only to the extent of the portion transferred), which occurs after the consummation of such sale, exchange, or assignment.

3. **City's Right to Conduct Inspections and Perform Maintenance.** It is agreed that City shall have the right, but not the obligation, to conduct inspections of the Property and select to perform any or all of the Maintenance Activities if, in the City's sole judgment, Owner has failed to perform the same. It is recognized and understood that the City makes no representation that it intends to or will perform any of the Maintenance Activities, and any election by City to perform any of the Maintenance Activities, shall in no way relieve Owner of its continuing maintenance obligations under this Agreement. If City elects to perform any of the Maintenance Activities, it is understood that City shall be deemed to be acting as the agent of the Owner and said work shall be without warranty or representation by City as to safety or effectiveness, shall be deemed to be accepted by Owner "as is", and shall be covered by Owner's indemnity provisions below.

In the event that City inspections are conducted, the Owner shall pay all of City's costs incurred in conducting the inspections. Owner's obligation to pay City's costs of conducting inspections is a continuing obligation and shall apply whether or not City has utilized all or any portion of the security provided pursuant to Paragraph 5.

If City performs any of the Maintenance Activities, after City has demanded that Owner perform the same and Owner has failed to do so within a reasonable time stated in the City's demand, then Owner shall pay all of City's costs incurred in performing the Maintenance Activities. Owner's obligation to pay City's costs of performing Maintenance Activities is a continuing obligation and shall apply whether or not City has utilized all or any portion of the security provided pursuant to Paragraph 5.

4. **Grant of Easement to City.** Owner hereby grants to City a perpetual easement over, under and across that portion of the (insert either “all of the PROPERTY” or “that portion of the PROPERTY described in Exhibit “B” hereto”) and incorporated herein by this reference, for purposes of accessing the BMPs and performing any of the City inspections or Maintenance Activities specified in Paragraph 1 above, or both. City shall have the right, at any time and without prior notice to Owner, to enter upon any part of said area as may be necessary or convenient for such purposes. Owner shall at all times maintain the Property so as to make City’s access clear and unobstructed.

5. **Security.** Owner has provided City with security to assure the faithful performance of the obligations of this agreement. The security is in the form of (“a Cash Deposit”) in the amount of \$\_\_\_\_\_. City may utilize the security to provide funding for the cost of City performing any of its inspections and Maintenance Activities under Paragraph 3 above. City may utilize all or any part of the security at any time pursuant to this Agreement. Should any portion of the security be used by City, Owner shall deposit additional funds or provide an additional Letter of Credit to City in the amount utilized by City. If the security is a cash deposit, and a Substitute Cash Deposit or Letter of Credit is provided acceptable to the City, any amount of the Cash Deposit not utilized by City shall be returned to Owner by a check made payable to Owner and mailed first class to Owner at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Letter of Credit shall be submitted on bank letterhead using the City approved form.

After a transfer by Owner to a bona fide purchaser (or transferee) for value, City agrees that upon the granting of any subsequent discretionary permits or approvals as to the Property or the portion transferred, City shall credit the purchaser or transferee the amount of Owner’s Cash Deposit, applicable to the portion transferred, or shall release the letter of Credit to Owner, if security for all of the Property is in place.

6. **Administration of Agreement for City.** City hereby designates its City Engineer as the officer charged with responsibility and authority to administer this Agreement on behalf of City. Any notice or communication related to the implementation of this Agreement desired or required to be delivered to City shall be addressed to:

City Engineer  
City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020

The City Engineer is also granted authority to enter into appropriate amendments to this Agreement on behalf of City, provided that the amendment is consistent with the purposes of this Agreement as set forth above.

7. **Defense and Indemnity.** City shall not be liable for, and Owner and its successors in interest, and each of them, shall defend and indemnify City and the employees and agents of City (collectively “City Parties”), against any and all claims, demands, liability, judgments, awards, fines, mechanic’s liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys’ fees and court costs (hereinafter collectively referred to as “Claims”), related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Owner, Owner’s successors, or their contractors, licensees, agents, servants or employees, including, without limitation, claims caused by the concurrent negligent act, error or omission, whether active or passive of City Parties. Owner shall have no obligation, however, to defend or indemnify City Parties from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of City Parties. Nothing in (1) this Agreement, (2) City’s approval of the subdivision or other applications or plans and specifications, (3) inspection of the storm water facilities and BMPs, or (4) Maintenance Activities on the part of City or its contractors, is intended to acknowledge responsibility for any such matter, and City Parties shall have absolutely no responsibility or liability therefore unless otherwise provided by applicable law.

Owner shall not be liable for, and City, to the extent permitted by law, shall defend and indemnify Owner from and against any and all Claims, which Owner may sustain by reason of the sole misconduct or willful misconduct of City Parties during Maintenance Activities.

City shall keep the Property fee and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Property, by or on behalf of City pursuant to this Agreement, except for liens or claims of City in enforcing the terms of this Agreement. All inspections and Maintenance Activities performed by or on behalf of City shall be done by City employees or licensed contractors hired by City for such services.

8. **Common Interest Developments.** If the Property is developed as a “Common Interest Development” as defined in California Civil Code section 1351(c) which will include membership in or ownership of an “Association” as defined in California Civil Code section 1351(a), then the following provisions of this Paragraph 8 shall apply during such time as the Property is encumbered by a “Declaration” as defined in California Civil Code section 1351(h), and the Common Area of the Property, as “Common Area” is defined in California Civil Code section 1351(b), is managed and controlled by the Association:

- (a) The Association, through its Board of Directors, shall assume full responsibility to perform the Maintenance Activities pursuant to this Agreement, and

shall undertake all actions and efforts necessary to accomplish the Maintenance Activities, including but not limited to, levying regular or special assessments against each member of the Association sufficient to provide funding for the City inspections and Maintenance Activities, conducting a vote of the membership related to such assessments if required by law. In the event insufficient votes have been obtained to authorize an assessment, the Association shall seek authority from a court of competent jurisdiction for a reduced percentage of affirmative votes necessary to authorize the assessment, re-conducting the vote of the membership in order to obtain the votes necessary to authorize an assessment, and the Association shall take all action authorized by the Declaration or California law to collect delinquent assessments, including but not limited to, the recording and foreclosure of assessment liens.

(b) No provision of the Declaration, nor any other governing document of the Association or grant of authority to its members, shall grant or recognize a right of any member or other person to alter, improve, maintain or repair any of the Property in any manner which would impair the functioning of the BMPs to manage drainage or storm water runoff as described in the SWMitP. In the event of any conflict between the terms of this Agreement and the Declaration or other Association governing documents, the provisions of this Agreement shall prevail.

9. **Agreement Binds Successors and Runs With the Property.** It is understood and agreed that the terms, covenants and conditions herein contained shall constitute covenants running with the land and shall be binding upon the heirs, executors, administrators, successors and assigns of Owner and City, shall be deemed to be for the benefit of all persons owning any interest in the Property (including the interests of City or its successors in the easement granted herein). It is the intent of the parties hereto that this Agreement may be recorded and shall be binding upon all persons purchasing or otherwise acquiring all or any lot, unit or other portion of the Property, who shall be deemed to have consented to and become bound by all the provisions hereof.

10. **Owner's Continuing Responsibilities Where Work Commenced or Permit Obtained.** Notwithstanding any other provision of this Agreement, no transfer or conveyance of the Property or any portion thereof shall in any way relieve Owner or otherwise affect Owner's responsibilities for installation or maintenance of BMPs, which may have arisen under the ordinances or regulations of City referred to in Recital B above, or other federal, state or City laws, as such statutes, regulations or ordinances may be adopted or amended from time to time, on account of Owner having obtained a permit which creates such obligations or having commenced grading, construction or other land disturbance work.

11. **Amendment and Release.** The terms of this Agreement may be modified only by a written amendment approved by the El Cajon City Council and signed by the Mayor, or approved and executed by the City Engineer acting on behalf of City, and by Owner or Owner's successors in interest. This Agreement may be terminated and Owner

and the Property released from the covenants set forth herein, by a release, which CITY may execute if it determines that another mechanism will assure the ongoing maintenance of the BMPs or that it is no longer necessary to assure such maintenance.

12. **Governing Law and Severability.** This Agreement shall be governed by the laws of the State of California. Venue in any action related to this Agreement shall be in the Superior Court of the State of California, County of San Diego. Owner hereby specifically waives any right to remove any action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity, and enforceability of the remaining provisions shall not be affected thereby.

[Signatures on following page]

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

OWNER:

\_\_\_\_\_

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

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

ATTEST:

\_\_\_\_\_

City Clerk

Dated: \_\_\_\_\_

CITY OF EL CAJON:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**NOTARY ACKNOWLEDGEMENT MUST BE ATTACHED**