

RECORDED AT THE REQUEST OF )  
and )  
WHEN RECORDED RETURN TO: )  
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SPACE ABOVE FOR RECORDER'S USE ONLY

**STORMWATER MANAGEMENT FACILITY  
EASEMENT AGREEMENT**

**County Assessor's Parcel # \_\_\_\_\_**

THIS STORMWATER MANAGEMENT FACILITY EASEMENT AGREEMENT

("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by  
\_\_\_\_\_, (hereinafter referred to as "GRANTOR") and the City of  
Cupertino ("CITY").

The GRANTOR does hereby grant and convey to the CITY, a Stormwater Facility Management  
Easement, as described in Attachment 'A' of this Agreement.

**RECITALS:**

This Agreement is made and entered into with reference to the following facts:

A. The GRANTOR is the owner of real property and improvements located within the City  
of Cupertino, County of Santa Clara, State of California ("PROPERTY"), as described in Exhibit  
"B" of this Agreement.

B. The developer of the property is required to install, operate, and maintain stormwater  
management facilities within the PROPERTY. The stormwater management facilities are shown  
in the Stormwater Management Plan prepared by \_\_\_\_\_ and dated \_\_\_\_\_, which plans and any  
amendments thereto, are on file with the Public Works Department of the City of Cupertino,  
California. The CITY has reviewed and approved the Storm Water Management Plan subject to

the execution of this agreement.

C. The GRANTOR, its successors and assigns, shall be responsible for maintenance of these stormwater management facilities in accordance with the Storm Water Maintenance Agreement for this facility and the CITY's Stormwater Pollution Prevention and Watershed Protection Ordinance.

D. The CITY, its successors and assigns, shall at all reasonable times have a right to enter said easement for the purpose of inspecting, monitoring, modifying, maintaining, and repairing the stormwater management facilities at the PROPERTY, within the easement described in Exhibit "A."

E. While this Agreement is in effect, the GRANTOR will not erect nor permit to be erected any building or structure of any nature whatsoever, nor fill or excavate within said easement without the CITY's written consent.

F. The GRANTOR will warrant specially said easement and shall execute such further assurances thereof as may be requisite.

G. In the event that the CITY shall determine at its sole discretion at any future time that the Stormwater Management Facility is no longer required, then at the request of the GRANTOR, its successors and/or assigns, the CITY shall execute a release of this Agreement which the GRANTOR, its successors and/or assigns, shall record with the COUNTY, at its/their expense.

NOW, THEREFORE, the parties hereto agree as follows:

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this Agreement. It is intended and determined that the provisions of this Agreement shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the real property described in Exhibit "A" or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said property and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as equitable servitudes, enforceable by any of the owners of any of the property subject to this Agreement against any other Owner, tenant or occupant of the said property, or any portion thereof.
2. Indemnity: The GRANTOR shall defend, indemnify, and hold the CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including without limitation reasonable attorneys' fees, arbitration fees or costs and court costs, arising out of or related to the use of the easement described in Exhibit "A," except to the extent

that such claims, liabilities, actions, causes of action, and damages arise out of or related to the CITY's negligence and/or intentional conduct or the negligence or intentional acts of any of the CITY'S employees, agents, representatives, contractors, vendors, or consultants.

3. Attorneys' Fees: In the event that any party institutes legal action or arbitration against the other to interpret or enforce this Agreement, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses and damages.
4. Further Documents: The parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this Agreement.
5. Entire Agreement: This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written that are not fully expressed herein.
6. Severability: In the event any part or provision of this Agreement shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this Agreement that can be separated for the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
7. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
8. Amendment: This Agreement may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the even any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.

Executed the day and year first above written.

(GRANTOR)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Notary Acknowledgment to be attached)

CITY OF CUPERTINO

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF CALIFORNIA    )  
  ) : SS  
COUNTY OF SANTA CLARA    )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, personally known to me or 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 executed the same in his authorized capacity, and  
that by his signature on the instrument the person, or the entity upon behalf of which the person  
acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]