|  |  |  |  |
| --- | --- | --- | --- |
| **RECORDING REQUESTED BY**  City of Rocklin  **AND WHEN RECORDED MAIL**  **DOCUMENT TO:**  City Clerk  City of Rocklin  3970 Rocklin Road  Rocklin, CA 95677 |  | **Space Above This Line for Recorder’s Use Only** |  |

APN: XXX-XXX-XXX File No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Stormwater Management Compliance Easement Agreement**

THIS STORMWATER MANAGEMENT COMPLIANCE EASEMENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as “GRANTOR”) and the City of Rocklin, a municipal corporation (“CITY”). GRANTOR and CITY are referred to collectively herein as the “Parties” and each individually as a “Party.”

**RECITALS**

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

1. CITY is authorized and required to regulate the control and disposition of storm and surface waters as set forth in the Chapter 8.30 of the CITY’s Municipal Code related to Stormwater Runoff Pollution Control.
2. GRANTOR is the owner of real property located within the City of Rocklin, County of Placer, State of California, designated as Assessor’s Parcel Number(s) LIST ALL APNs and more particularly described in Exhibit “**A**” attached hereto (“Property”).
3. GRANTOR desires to develop the Property pursuant to Resolution No. RESOLUTION approving a design review and Resolution No. RESOLUTION approving a PROJECT DESCRIPTION which was approved by the Rocklin Planning Commission on DATE.
4. Condition of Approval REFERENCE SECTION/ITEM/SUBSECTION related to Stormwater Management requires, among other things, the Property owner grant the CITY a Stormwater Management Compliance Easement.
5. GRANTOR desires to construct certain improvements on the Property that may alter existing stormwater conditions on the Property and adjacent lands.
6. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, GRANTOR is required to install, operate, and maintain at GRANTOR’s expense, certain stormwater management facilities (“Facilities”) as more particularly described and shown in the Stormwater Facilities Operation and Maintenance Plan and Final Stormwater Control Plan submitted to CITY, together with any and all amendments, including future amendments, thereto (collectively the “Plan”), are on file with the CITY’s Department of Public Works.
7. GRANTOR, its successors and assigns, shall be responsible for maintenance of the Facilities in accordance with the Stormwater Management Compliance Easement Agreement for this Property, the Plan and Chapter 8.30 of the CITY’s Municipal Code.

**AGREEMENT**

NOW, THEREFORE, in consideration of the benefits received and to be received by the GRANTOR, its successors and assigns, as a result of the CITY’s approval of the Plan, the Parties hereby agree as follows:

1. Incorporation of Recitals. The Parties agree that the Recitals constitute the factual basis upon which the CITY and GRANTOR have entered into this Agreement. The CITY and GRANTOR each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth herein.
2. Covenants Running With the Land; Property Subject to Agreement. All of the Property described in Exhibit **“A**” shall be subject to this Agreement. The Parties intend that this Agreement runs with the land and is binding on GRANTOR, its successors and assigns, and all Parties having or acquiring any right, title or interest in the Property or any portion thereof, and their respective successors and assigns, and is for the benefit of CITY and its successors and assigns regardless of whether CITY has any ownership interest in the Property or any portion thereof or any Property adjacent thereto. Every limitation, easement, obligation, covenant, condition, and restriction contained herein shall be deemed to be, and shall be construed as a covenant running with the land, and in addition, shall be construed as an equitable servitude enforceable by any owner of any portion of the Property against any other owner, tenant or occupant of the Property or any portion thereof. Subject to the provisions below, each reference in this Agreement to GRANTOR shall mean GRANTOR and its successors in interest to the Property or any portion thereof.
3. Responsibility for Installation, Operation and Maintenance. At its sole expense, GRANTOR shall construct, operate and perpetually maintain the Facilities in strict accordance with (a) the CITY’s Municipal Code, (b) manufacturer’s recommendations where applicable, (c) the Plan and any amendments thereto that have been approved by CITY, and (d) all applicable federal, state and local laws, ordinances, and regulations. GRANTOR, on an annual basis, will prepare and deliver to the CITY’s Director of Public Works, a maintenance inspection annual report “Annual Report” or such other form as may be reasonably required by CITY from time to time. The Annual Report shall identify all completed inspection and maintenance tasks for the reporting period and shall be submitted to the CITY in order to verify that inspection and maintenance of the Facilities have been documented as required by this Agreement. The Annual Report shall be submitted no later than October 15 of each year, under penalty of perjury, to the CITY’s Director of Public Works. GRANTOR shall conduct a minimum of one annual inspection of the Facilities before the rainy season; this inspection shall occur between August 1 and September 30 each year. More frequent inspections may be required to comply with the maintenance standards. The results of inspections shall be recorded in the Annual Report.
4. Facility Modifications. At its sole expense, the GRANTOR shall make such changes or modifications to the Facilities as the City Engineer may reasonably determine to be necessary or desirable to ensure that the Facilities continue to operate as originally designed and approved. Any changes or modifications to the Facilities may be made only with prior written authorization by the City Engineer or his or her designee.
5. Grant of Easement. GRANTOR hereby grants to CITY a nonexclusive, perpetual ingress, egress, access and maintenance easement (“Easement”) over the easement area as depicted and described in **Exhibit “B”** attached hereto and incorporated herein (“Easement Area”) for the purpose of permitting the CITY, and its employees, agents, contractors, consultants, to inspect, monitor, maintain, repair and replace the Facilities.
6. Facility Inspections by CITY. At reasonable times, after not less than forty-eight (48) hours prior written notice, except in the event of an immediate threat to public health and safety in which case no prior notice shall be required, and in a reasonable manner, the CITY, its agents, employees, contractors, and consultants shall have the right of ingress and egress to the Easement Area for the purpose of inspecting the Facilities to ensure that the Facilities are being properly maintained, are continuing to perform in an adequate manner (as reasonably determined by the City Engineer or his or her designee), and are in compliance with the CITY’s Municipal Code, the Plan and any amendments thereto approved by the CITY and all applicable laws
7. No Barriers. While this Agreement is in effect, GRANTOR shall not erect, nor permit to be erected, any building or structure of any kind within the Easement Area which may interfere with the Facilities, nor shall GRANTOR fill or excavate within the Easement Area without CITY’s prior written consent which shall not be unreasonably withheld, but may be conditioned upon such requirements as City Engineer determines are reasonably necessary or desirable to ensure proper functioning of the Facilities.
8. Default and Remedies. If following delivery of written notice from CITY and the expiration of a thirty (30) day cure period (except in the event of an immediate threat to public health and safety in which case GRANTOR shall commence and complete corrective action as soon as possible following receipt of notice from the CITY), GRANTOR fails to correct any defect in the Facilities in accordance with the approved design standards, the Plan, the CITY’s Municipal Code, and all other applicable state, federal, and local laws, rules, and regulations, or GRANTOR otherwise fails to comply with the maintenance and repair obligations set forth in the Plan and this Agreement, the CITY shall have the right upon delivery of forty-eight (48) hours prior written notice (except in the event of an immediate threat to public health and safety in which case no notice shall be required) to enter the Easement Area for the purposes of maintaining and repairing the Facilities at GRANTOR’s expense, and GRANTOR shall be obligated to reimburse CITY for the cost of all such work, including, without limitation, the cost of CITY staff time, within thirty (30) days following CITY’s delivery of an invoice therefore, together with documentation of CITY’s costs and expenses incurred in connection with the performance of such work. If such costs are not paid within the prescribed time period, the CITY may assess GRANTOR the cost of the work, and said assessment shall be a lien against the Property or may be placed on the Property tax bill and collected as ordinary taxes by the CITY. In addition to the foregoing, the CITY may pursue any other remedies provided under law or in equity, including without limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, an order for specific performance, civil and criminal penalties, and the remedies set forth in Chapter 8.30 of the CITY’s Municipal Code. All such remedies shall be cumulative and not alternative.
9. Indemnity. The GRANTOR shall defend, indemnify, and hold the CITY and its elected and appointed officers, officials, employees, agents, representatives, contractors, vendors and consultants (all of the foregoing, the “Indemnitees”) harmless from any and all claims, demands, losses, actions, suits, judicial or administrative proceedings, damages for personal injury, bodily injury, death and property damage, costs and expenses, including without limitation reasonable attorneys’ fees, arbitration fees or costs, and court costs, penalties, deficiencies, fines, orders, and damages (all of the foregoing, “Claims”), arising out of or related to, or alleged to arise out of or be related to, the ownership, operation, use of the Property or the construction, operation, maintenance, or failure to maintain, the Facilities, except to the extent that any such Claim arises from the gross negligence or willful misconduct of the CITY or any Indemnitee. Notwithstanding the foregoing sentence, GRANTOR shall be required to defend CITY and the Indemnitees against any and all Claims, regardless of the extent to which (or if at all) CITY or any Indemnitee has contributed or is alleged or found to have caused or contributed to such Claims. GRANTOR’s indemnity obligations shall apply regardless of whether any CITY insurance policies, self-insurance or joint self-insurance has been determined to be applicable to such Claims and regardless of whether or not CITY has prepared, supplied or approved of plans and specifications for the construction, installation, maintenance, repair or replacement of the Facilities.
10. Obligations and Responsibilities of GRANTOR. Initially, the GRANTOR named above shall be solely responsible for the performance of the obligations required under this Agreement and for the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the Property or any portion thereof (a “Transfer”) to a third party, the GRANTOR shall be released of its obligations and responsibilities under this Agreement accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the Property included in such Transfer.
11. Property Transfer. Nothing herein shall be construed to prohibit a Transfer of the Property or any part thereof by the GRANTOR to subsequent owners and assigns.
12. Termination and Release of Agreement. In the event that the CITY determines, in the exercise of its sole discretion, at any future time that the Facilities are no longer required, then it promptly shall so notify the GRANTOR or its successor and/or assigns in writing, and at the written request of the GRANTOR, the CITY shall execute a termination and release of this Agreement which the GRANTOR shall cause to be recorded in the Official Records at GRANTOR’s sole expense.
13. Miscellaneous.
    1. Notices. Except as otherwise specified herein, all notices, demands, requests or approvals to be sent pursuant to this Agreement shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by: (a) personal delivery, in which case notice is effective upon delivery; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; (c) nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or (d) postage prepaid registered or certified mail, in which case notice shall be deemed delivered on the second business day after the deposit thereof with the U.S. Postal Service.

City:

City of Rocklin

4081 Alvis Court

Rocklin, CA 95677

Attention: Director of Public Works

With a copy to:

City of Rocklin

3970 Rocklin Road

Rocklin, CA 95677

Attention: City Attorney

GRANTOR:

Name of GRANTOR

Address

City, ST ZIP

Attention:

* 1. Attorneys’ Fees. In the event that either Party institutes legal action or arbitration against the other to interpret 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.
  2. Governing Law; Venue. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the laws of the State of California without reference to its choice of law provisions. Any dispute related to the interpretation or enforcement of this Agreement shall be heard in courts having jurisdiction in Placer County, California.
  3. Further Assurances. CITY and GRANTOR shall each execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to fully effectuate the terms and provisions of this Agreement.
  4. Entire Agreement. This Agreement, together with the Plan, constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior written or oral agreements with respect thereto.
  5. Relationship of Parties. Neither GRANTOR nor any of its contractors, employees or agents shall be deemed to be agents of CITY in connection with the performance of GRANTOR’s obligations under this Agreement. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. CITY neither undertakes nor assumes any responsibility or duty to GRANTOR (except as expressly provided in this Agreement) or to any third party with respect to the Facilities.
  6. Headings; Construction; Statutory References. The heading of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. This Agreement is the product of negotiation between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the CITY shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject. The recitals above and exhibits attached hereto are a substantive part of this Agreement and are hereby incorporated herein.
  7. Permits and Licenses; Compliance with Law. GRANTOR, at its expense, shall comply with all applicable legal requirements, including all federal, state, and local laws and regulations (including ordinances, regulations and resolutions, and requirements of other agencies with jurisdiction), whether or not said laws or regulations are expressly stated in this Agreement, and obtain and maintain all necessary permits and licenses required in order to own, operate and maintain the Facilities.
  8. Liens. GRANTOR shall pay, when due, all persons furnishing labor or materials in connection with any work to be performed by or on behalf of GRANTOR related to the Facilities, and shall keep CITY’s interests in the Easement Area free and clear of any related mechanics’ liens.
  9. Joint and Several Liability. If GRANTOR consists of more than one person or entity, the obligations of such persons and entities shall be joint and several.
  10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.
  11. 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.
  12. 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 from the invalid or, unenforceable provisions shall, nevertheless, continue in full force and effect.
  13. No Waiver. Any waiver by CITY of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by CITY to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by CITY at any time to require strict performance by GRANTOR of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.
  14. Recordation; Amendment. CITY, at GRANTOR’s expense, shall cause this Agreement to be recorded in the Official Records promptly following execution hereof. This Agreement may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in the Official Records. In the event 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.

**EXHIBIT “A” AND EXHIBIT “B” attached hereto**.

Executed the day and year first written above.

(GRANTOR)

By:

(*Signature*)

(*Print or Type Name and Title*)

*Notary Acknowledgement Attached*

CITY OF ROCKLIN

A Municipal Corporation

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

Aly Zimmerman, City Manager

*Notary Acknowledgement Attached*

APPROVED AS TO FORM:

Crystal Hodgson

Assistant City Attorney

ATTEST:

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

Avinta Singh

City Clerk

Trustee/Beneficiary:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Trustee/Beneficiary under Deed of Trust recorded \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ IN DOCUMENT NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Official Records of Placer County hereby consents to the Stormwater Management Compliance Easement Agreement and unconditionally subordinates the lien or charge of the foregoing deed of trust in favor of this Stormwater Management Compliance Easement Agreement, which shall be unconditionally prior and superior to the lien or charge of the deed of trust.

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

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

       Print Name and Title

**NOTARY ACKNOWLEDGEMENT INSERTED HERE**

**NOTARY ACKNOWLEDGEMENT INSERTED HERE**