

**Recording requested by
and when recorded return to:**
City of Guadalupe Public Works Department
c/o Building Department Counter
918 Obispo Street
Guadalupe, CA 93434

No Fee Per Government Code

Project:
APN:
Location:

**OWNER’S AGREEMENT TO CONSTRUCT AND MAINTAIN PRIVATE DRAINAGE
IMPROVEMENTS FOR WATER QUALITY**

This Agreement is by and between _____
("Owner") and the City of Guadalupe, a municipal corporation ("City").

WHEREAS, Owner is the owner of that property located on Assessor’s Parcel
No. _____ in the City, which is more particularly described in Exhibit "A", attached
hereto and incorporated herein by reference ("Property"). Owner wishes to develop the
Property in accordance with approved plans on file with the City, Project Name/No.
_____ ("Project"); and

WHEREAS, the City of Guadalupe City Council approved the Project subject to
compliance with certain conditions as set forth in the Conditions of Approval; and

WHEREAS, the Conditions require that the Owner comply with municipal
separate storm sewer system (MS4) requirements imposed on the City by California
and other laws, and therefore, Owner must enter into an agreement with the City that
provides for the construction and maintenance of private drainage improvements for
water quality treatment benefitting the Project; and,

WHEREAS, the Owner wishes to construct and provide for the maintenance of
those private drainage improvements upon development of the Project as permitted by
the conditions of approval.

NOW THEREFORE, the Owner, for itself and its heirs, executors, administrators,
successors, and/or assigns, does hereby irrevocably agree as follows:

1. The Owner shall install, maintain, repair and replace all water quality drainage
improvements, namely _____ [*state stormwater control measures
(SCMs) implemented*] ("Improvements") according to plans, specifications, and to
a standard approved by the City Engineer ("Engineer"). These improvements
shall be installed as shown in attached Map of On-Site Stormwater Control

Measures (Private Stormwater Devices), Exhibit "C", which is incorporated by this reference.

The installation of the Improvements shall be completed not later than one year following the execution of this agreement, or within such extension of that time as is approved by the Engineer.

There shall be no clearance for occupancy granted until such time as all the Improvements are constructed or installed in accordance with the approved plans and a third party verification (Stormwater Control Measures Certification of Approval) performed by a registered licensed professional (engineer, architect, geologist and/or landscape architect) is submitted to the Engineer. All the Improvements shall be maintained in a safe, usable and visually acceptable condition, free of obstructions to the design flow and free from impediments to use of the Improvements. Owner shall maintain adequate access at all times to allow for maintenance, repair and replacement of the Improvements as needed.

All such maintenance, repair, replacement and installation of the Improvements shall be at the sole cost and expense of the Owner and shall be performed as described in Exhibit "B".

2. In January of each year, Owner will provide City with documentation identifying the date of Owner's inspection of the Improvements, the type and quantity of material(s) removed and disposed of, and other maintenance performed to the Improvements. Upon Owner's failure to complete needed inspection, repair, maintenance or replacement of the Improvements, the City may, upon (10) calendar days' notice to the address last appearing for the Property on the County Assessor's roll, enter upon the premises and complete such needed work or improvement at the cost of and to be recovered from Owner, or Owner's heirs, executors, administrators, successors and/or assigns, by bid force account, negotiated contract, or such other manner as may appear suitable to Engineer. Owner or Owner's heirs, executors, administrators, successors and/or assigns shall repay the City for all such costs and expenses incurred, including all costs reasonably incurred to enforce this agreement and reasonable attorney's fees if legal action is instituted.
3. Owner agrees that Owner, on behalf of itself and its agents, employees, sublessees, licensees or invitees, shall at all times defend, indemnify, and save harmless City and any and all of its elected and appointed officials, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever for death of or injury to persons or damage to property and for civil fines and penalties, that may arise from or be caused directly or indirectly by the design, construction, operation and/or maintenance of the Improvements, excepting the sole negligence or willful misconduct of City, its elected and appointed officials, officers, agents and employees, and including but not limited

to any act, omission or negligence of Owner or its agents, employees, sublessees, licensees or invitees, or any failure of Owner or its agents or employees to comply with any of the provisions or conditions of this agreement or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation. Owner hereby waives any claim against the City for failure to maintain the Improvements or for City's failure to enforce any or all provisions of this agreement to the full extent permitted by law. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this agreement, or its performance, Owner will defend City (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise. It is expressly understood and agreed that the foregoing provisions in this Section 4 will survive any termination of this agreement.

4. This agreement inures to and is for the benefit of Property, and is intended to be a covenant running with the Property, binding upon the heirs, executors, administrators, successors and/or assigns of the Owner. In the event that this agreement is not enforceable as a covenant running with the land, it shall nevertheless be enforceable as an equitable servitude.
5. All parties to this agreement warrant and represent that they have the power and authority to enter into this agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this agreement have been fully complied with.
6. Any notice to a party required or called for in this agreement will be served in person, or by deposit in the U.S. Mail, first-class postage prepaid, to the address set forth below. Notice will be deemed effective upon receipt, or 72 hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice to the other party.

IF TO CITY:

IF TO OWNER:

| | |
|--------------------------|------------------------------|
| City of Guadalupe | [owner name] |
| Attn: City Administrator | Attn: [owner representative] |
| 918 Obispo Street | [street name & address] |
| Guadalupe, CA 93434 | |
| | |

7. If any portion of this agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the

extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

8. Waiver of any provision of this agreement will not be deemed to constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver.
9. This Agreement has been made in and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this Agreement will be in Santa Barbara County.
10. This Agreement is subject to and conditioned upon approval and ratification by the Guadalupe City Council. This agreement is not binding upon City until executed by the Mayor.
11. Security: If the Owner fails to maintain the Improvements as required by the standards specified in Exhibit "C", the City may require Owner, at the Owner's sole cost, to post security in form, for a time period, and in an amount satisfactory to City, to guarantee the performance of the obligations set forth herein. Should the Owner fail to perform the obligations under this Agreement, the City may realize against said security, in the case of a cash bond, act for Owner using the proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of the agreement. As an additional remedy, Engineer may cause the withdrawal of any previous stormwater related approval with respect to the property on which said private Improvements have been installed, until such time as Owner repays to City its reasonable costs.
12. City's Right of Entry: Should the City determine, in its sole discretion, that the Owner has not performed its maintenance obligations, or in the event of an emergency, City may, but is not required to, enter the Property and perform inspection, sampling and testing and/or maintenance and repairs upon said private Improvements at property Owner's expense upon ten (10) calendar days notification to the property owner except in the event of an emergency, in which case the City may enter without notice.
13. This agreement will be recorded in the Santa Barbara County Recorder's Office at Owner's expense and will constitute notice to all heirs, successors, and assigns of title to the Property of Owner's obligations.
14. This agreement constitutes the sole agreement between Owner and City respecting the maintenance of the Improvements installed therein, and correctly sets forth the obligations of Owner and City. There are no other understandings, terms or other agreements expressed or implied, oral or written.

IN WITNESS THEREOF, the parties hereto affixed their signatures as of the date first hereinabove written.

CITY OF GUADALUPE:

OWNER:

[Name]
City Engineer

[Name]
[Title]

ATTEST:

City Clerk

APPROVED AS TO FORM:

David M. Fleishman, City Attorney

ACKNOWLEDGMENT

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 _____)

On _____ before me, _____
(insert name and title of the officer)
personally appeared

_____,
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 _____
(Seal)

CERTIFICATION

The OWNER'S agreement to construct and maintain private drainage improvements and private drainage maintenance easements set forth above, is hereby acknowledged, and the recordation hereof is approved.

Dated:

City of Guadalupe

By: _____

EXHIBIT A
Legal Description

LEGAL DESCRIPTION:

All that land situated in the City of Guadalupe, California, described as follows:

Parcel _____ of Parcel Map No. _____, in the City of Guadalupe, State of California, per the map thereof, recorded in Book ____, Pages _____, of Parcel Maps in the Office of the County Recorder of said County.

EXHIBIT B
Map of On-Site Stormwater Control Measures
(Private Stormwater Devices)
[Include Vicinity Map]

EXHIBIT C
Storm Water Quality Operations and Maintenance Plan