

CC&R Provisions which Require a Subdivision's Homeowners Association to
Operate and Maintain a Stormwater Management Facility
Instruction Sheet for Use of this Document

1. This document contains the substance of the provisions that need to be part of the Conditions, Covenants and Restrictions (CC&Rs) that are recorded against the subdivision to establish the obligation of the homeowners' association to maintain the stormwater management facility.

The CC&Rs themselves need to be drafted by the subdivider's real estate lawyer, and submitted for review to the City Attorney's office.

2. The "Definitions" are definitions that when added to the CC&Rs along with the "Improvement" language will require the homeowners' association to operate and maintain the stormwater management facility. The CC&Rs may include the maintenance of more improvements in the subdivision than the stormwater management facility, and the subdivider may want a different level of maintenance for these other improvements. However, the City should insist on the language in the attached document for maintenance level of the stormwater management facility.

3. The "Improvements" language compliments the "Definitions" and goes in the section of the CC&Rs that establish the duty of the homeowners' association to maintain facilities.

4. The "Amendments" language prevents the subdivider or subsequent purchasers of the lots from amending the CC&Rs in any way that diminishes the operations and maintenance obligation that the association has for the stormwater management facilities.

CC&R Provisions for Subdivisions with a Homeowners' Association

Definitions.

Maintain: The term "**Maintain**" or "**Maintained**" shall mean taking all actions reasonably necessary to keep the Stormwater Facility in first class operation, condition and repair, which actions include but are not limited to regular inspections, painting, cleaning, maintenance, refinishing, repairing, replacing and reconstructing the Stormwater Facility, and in the case of landscaping, irrigating, plant replacement, trimming and mowing, mulch replacement, and fertilizing the landscaping. The term shall also include the routine maintenance, and the annual inspection and reporting described in the Stormwater Control Operation and Maintenance Plan, and the payment of any applicable City fees.

Stormwater Control Operation and Maintenance Plan: The term "**Stormwater Control Operation and Maintenance Plan**" means the City-approved Stormwater Control Operation and Maintenance Plan prepared by _____ and approved by the City of _____ on the date of _____, 20 ____, which may be subsequently modified from time to time with City Engineer's prior written approval.

Stormwater Facility: The term "**Stormwater Facility**" means the permanent stormwater management facilities located and constructed on Parcel A of the Property. All of Parcel A is part of the Stormwater Facility

Improvements

Responsibility for Operation and Maintenance of the Stormwater Facility. No portion of the Stormwater Facility (Parcel A) may be altered, in any way, by the Association without the prior written consent of the City Engineer of the City of _____. The Association shall Maintain the Stormwater Facility (Parcel A) in first class operating condition, and in compliance with all applicable state, county and city laws and regulations. Applicable regulations include, but are not limited to, the City-approved Stormwater Control Operation and Maintenance Plan, and the provisions of Chapter __ of Title _ of the _____ Municipal Code (Stormwater Management and Discharge Control), as may be amended from time to time. No portion of the Stormwater Facility (Parcel A) may be altered, in any way, by the Association or an Owner without the prior written consent of the City Engineer.

The Association shall engage a landscape contractor or other licensed contractor to Maintain the Stormwater Facility. The City Engineer, in her or his sole absolute discretion, may approve an alternate method for the maintenance of the Stormwater Facility. The City Engineer, also in her or his sole absolute discretion, may revoke the approval of a previously approved alternate method for the maintenance of the Stormwater Facility.

Amendments

Approval. Prior to the conveyance of the first Lot to an Owner other than a Declarant, except as provided in subsection (a) any Project Document may be amended by Declarant alone. After the conveyance of the first Lot, the Project Documents may be amended if each of the following requirements is satisfied:

(a) The provisions of Section _____ (Responsibility for Operation and Maintenance of the Stormwater Facility) may not be amended nor shall other provisions be adopted that purport to supercede it without the prior written consent of the City Engineer of the City of _____.

(b)