

EXHIBIT E

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK
CITY OF MORGAN HILL
17555 PEAK AVENUE
MORGAN HILL, CA 95037

RECORD AT NO FEE
PER GOVERNMENT CODE SECTION 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STORMWATER BMP
OPERATION AND MAINTENANCE AGREEMENT**

THIS STORMWATER BMP OPERATION AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this ____ day of _____, 2016, by **Barley Place LLC**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY").

RECITALS:

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

- A. The CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in the CITY's National Pollutant Discharge Elimination System permit.
- B. The COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto (the "PROPERTY").
- C. The COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.71 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, the COVENANTOR is required by the CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **Stormwater Runoff Management Plan for Barley Place** prepared by **MH Engineering Inc.** and dated _____, which plans and any amendments thereto, are on file with the Public Works Department of the City of Morganhill, California, and are hereby incorporated by reference.
- E. The CITY has reviewed and approved the Stormwater Runoff Management Plan subject to the execution of this AGREEMENT.

NOW, THEREFORE, in consideration of the benefit received and to be received by the COVENANTOR, its successors and assigns, as a result of the CITY'S approval of the Stormwater Runoff Management Plan, the COVENANTOR, hereby covenants and agrees with the CITY 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" ("PROPERTY") 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.

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2. Responsibility for Installation, Operation and Maintenance: At their sole expense, the COVENANTOR, its successors and assigns, shall construct, operate and perpetually maintain the FACILITIES in strict accordance with the Stormwater Runoff Management Plan and any amendments thereto that have been approved by the CITY or the ORDINANCE.
3. Facility Modifications: At their sole expense, the COVENANTOR, its successors and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by the CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by the city prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by the CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, the CITY, its agents, employees and contractors, shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner and are in compliance with the ORDINANCE, the Stormwater Runoff Management Plan and any amendments thereto approved by the City.
5. Failure to Perform Required Facility Repairs or Modifications: Should either the COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities or correct any defects in the FACILITIES in accordance with the approved design standards and/or the Stormwater Runoff Management Plan and in accordance with the law and applicable regulations of the ORDINANCE 30 days from the date of the written notice from the CITY, the CITY shall have the right to enter the PROPERTY to perform remedial work, for which the CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to all procedures, abatement of such conditions and remedies as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, the CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: The COVENANTOR, its successors and assigns, 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 COVENANTOR'S, its successors' and/or assigns' construction, operation or maintenance of the BMPs FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of the CITY'S sole negligence or willful misconduct or the sole negligence or willful misconduct of any of the CITY'S employees, agents, representatives, contractors, vendors, or consultants.
7. Obligations and Responsibilities of COVENANTOR: Initially, the COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, 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 "Transferee"), the COVENANTOR shall be released of all 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, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of the CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument or agreement shall be provided to the CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of the COVENANTOR under this AGREEMENT as provided above.
8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by the COVENANTOR to subsequent owners and assigns.

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9. 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.
10. 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.
11. 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.
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 for the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. 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.
14. 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 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.
15. In the event that the CITY shall determine at its sole discretion at any future time that the FACILITIES are no longer required, then at the written request of the COVENANTOR, its successors and/or assigns, the city shall execute a release of this AGREEMENT which the COVENANTOR, its successors and/or assigns, shall record in the Clerk's Office, at its/their expense.

Executed the day and year first above written.

COVENANTOR:

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

CITY OF MORGAN HILL

By: _____

Name: _____

Title: _____