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**Declaration of Covenant and Grant of Easement
For
Stormwater Management Facilities Privately Operated and Maintained on
Grantor's and SVCA's Parcels, That Serve Development on Grantor's Parcel**

Grantors:

_____ ("Grantor") and
Sudden Valley Community Association ("SVCA")

Grantee(s):

Whatcom County

*Full Legal
Description;*

Grantor's Property:

OR

*Abbreviated
Legal
Description:
(Insert Lot,
Block, & Plat;*

SVCA's Property:

OR

*Quarter/Quarter,
Section, Township,
& Range;*

OR

*Unit, Building,
Phase, & Condo
Name)*

*Assessor's 16-digit
parcel numbers:*

Full Legal Description of Grantor's Property (the "Grantor's Property") (complete only if cover page reflects abbreviated legal description, otherwise leave blank):

Full Legal Description of SVCA's Property (the "SVCA's Property") (complete only if cover page reflects abbreviated legal description, otherwise leave blank):

1. Declaration Effective Date: _____

2. Declaration Expiration Date: Indefinite.

3. Parties: The Parties to this Declaration are:

(1) The Grantor and Grantor's subsequent successors, heirs, and/or assigns;

(2) SVCA and SVCA's subsequent successors, heirs, and/or assigns, and;

(3) The Grantee and any jurisdiction that annexes said parcel in the future.

WHEREAS, as of the Declaration Effective Date above, the following stormwater management facilities exist, or will be constructed, on the Grantor's Property (check all that apply):

- Flow conveyance and/or control,
- Treatment,
- On-site best management practices (OSBMP),

to serve development on the Grantor's Property, and;

WHEREAS, as of the Declaration Effective Date above, the following stormwater management facilities exist, or will be constructed, on the SVCA's Property (check all that apply):

- Flow conveyance and/or control,
- Treatment,
- On-site best management practices (OSBMP),

to serve development on the Grantor's Property, and;

WHEREAS, said facilities located on the Grantor's Property and the SVCA's Property shall be collectively referred to herein as the "Facilities", and;

WHEREAS, Grantee has approved said Facilities, and;

WHEREAS, the 2012 Washington State Department of Ecology *Stormwater Management Manual for Western Washington* (2012 WSDOE SWMMWW) applies to said Facilities' design, and;

WHEREAS, 2012 WSDOE SWMMWW Volume I on page 3-16 states, in part, the following:

"Declaration of Covenant for Privately Maintained Flow Control and Treatment Facilities

To ensure future maintenance and allow access for inspection by the local government, any flow control [and/or conveyance per 2012 WSDOE SWMMWW Minimum Requirement No. 7] and treatment [per 2012 WSDOE SWMMWW Minimum Requirement No. 6] facilities for which the applicant identifies operation and maintenance to be the responsibility of a private party must have a declaration of covenant and grant of easement. After approval by the local government, the declaration of covenant and grant of easement must be signed and recorded at the appropriate records office of the local government.

Declaration of Covenant for Privately Maintained On-site Stormwater Management BMPs [OSBMPs]

To ensure future maintenance and allow access for inspection by the local government, any On-site Stormwater Management BMPs [per 2012 WSDOE SWMMWW Volume I Glossary definition and 2012 WSDOE SWMMWW Minimum Requirement No. 5] for which the applicant identifies operation and maintenance to be the responsibility of a private party must have a declaration of covenant and grant of easement. Design details, figures, and maintenance instructions for each On-site Stormwater Management BMP shall be attached. A map showing the location of newly planted and retained trees claimed as flow reduction credits shall also be attached. This applies to every lot within a subdivision on which an On-site Stormwater Management BMP is proposed. After approval by the local government, the declaration of covenant and grant of easement must be signed and recorded at the appropriate records office of the local government.", and;

WHEREAS, for the purposes of this Declaration, 2012 WSDOE SWMMWW Minimum Requirement No. 5 applies to OSBMPs, and;

WHEREAS, for the purposes of this Declaration, 2012 WSDOE SWMMWW Minimum Requirement No. 6 applies to stormwater "treatment" facilities, and;

WHEREAS, for the purposes of this Declaration, 2012 WSDOE SWMMWW Minimum Requirement No. 7 applies to stormwater “flow control and/or conveyance” facilities, and;

WHEREAS, if OSBMPs exist, or will be constructed, on the Grantor’s Property and the SVCA’s Property, Exhibit A to this Declaration reflects the design details, figures, and maintenance instructions for each OSBMP, and;

WHEREAS, Grantor desires to install a portion of the Facilities on the SVCA’s Property, and;

WHEREAS, SVCA is willing to grant the Grantor an easement to locate a portion of the Facilities on that portion of SVCA’s Property legally described on Exhibit [REDACTED] hereto and depicted on Exhibit [REDACTED] hereto (the “SVCA Easement Area”).

NOW THEREFORE:

1. Grantor hereby declares as follows:

- 1.1. The routine operation and maintenance of said Facilities, whether located on Grantor’s Property or SVCA’s Property, will be the sole and exclusive responsibility of the Grantor.
- 1.2. For stormwater flow control and/or conveyance facilities, and/or stormwater treatment facilities, Grantor or Grantor’s duly appointed agent shall operate and maintain said Facilities, whether located on Grantor’s Property or SVCA’s Property, in accordance with the Sudden Valley Community Association Stormwater Management and Phosphorous Mitigation Plan Attachment 3, *SVCA Residential Stormwater Management System Inspection and Maintenance Manual*, at its sole cost and expense.
- 1.3. For OSBMPs, Grantor or Grantor’s duly appointed agent shall operate and maintain said Facilities, whether located on Grantor’s Property or SVCA’s Property, in accordance with Exhibit A at its sole cost and expense.
- 1.4. Grantor authorizes Grantee or Grantee’s duly appointed agent(s) to periodically enter onto Grantor’s Property to inspect and assess said Facilities’ physical condition and functionality, and to determine if Grantor or Grantor’s duly appointed agent has accomplished any of Grantee or Grantee’s duly appointed agent(s)’ directed maintenance and/or repair of said Facilities as determined per Paragraph 1.5 below. Paragraph 3.1 advance visitation notice provisions below also apply.
- 1.5. If, after conducting physical condition inspection and assessment of said Facilities, Grantee or Grantee’s duly appointed agent(s) determines that said Facilities’ maintenance and/or repair is necessary, Grantor or Grantor’s duly appointed agent will accomplish same within thirty (30) calendar days after receipt of a formal corrective action notice from Grantee or Grantee’s duly appointed agent(s).
- 1.6. If Grantor or Grantor’s duly appointed agent fails to timely accomplish said Facility maintenance and/or repair in accordance with said formal corrective action notice, Grantor authorizes Grantee or Grantee’s duly appointed agent(s) to access onto said parcel to accomplish said Facility maintenance and/or repair. Paragraph 3.1 advance visitation notice provisions below also apply.

- 1.7. If at any time that Grantee or Grantee's duly appointed agent(s) reasonably determines that said Facilities pose an immediate hazard to life and limb, or endanger property, or adversely affect the safety and operations of a public way, due to failure of, damage to, or non-maintenance of said Facilities, and that the situation is so adverse as to preclude advance visitation notice to Grantor, Grantor authorizes Grantee or Grantee's duly appointed agent(s), without prior advance visitation notice to Grantor by Grantee or by Grantee's duly appointed agent(s), to access onto Grantor's Property to take any mitigation or preservative actions that Grantee or Grantee's duly appointed agent(s) determine necessary.
 - 1.8. Grantor will reimburse Grantee for Grantee's costs to accomplish maintenance and/or repair of said Facilities per Paragraph 1.6 above, and for emergency response mitigation or preservation actions per Paragraph 1.7 above.
 - 1.9. Grantor shall assume full responsibility and liability for acts of its employees, agents, contractors or other authorized people including, but not limited to, the Grantee, working within the SVCA Easement Area. In this regard, Grantor shall indemnify, defend, and hold SVCA harmless against any and all loss, claim, or liability incurred as a result of Grantor's construction, operation, maintenance, repair, replacement and use of Facilities within the SVCA Easement Area. Without limiting the generality of the foregoing, Grantor shall defend, indemnify, and hold harmless SVCA from any and all fines, charges, costs, or other claims imposed by Grantee, or any other entity with jurisdiction, in any way related to or arising out of the Facilities located on the SVCA Easement Area.
 - 1.10. The Grantor shall not disturb the SVCA Easement Area more than is reasonably necessary for the purposes of the easement granted under Paragraph 3.1 below. After completing any work on the SVCA Easement Area permitted by Paragraph 3.1, the Grantor shall return the SVCA's Property as near as possible to the condition it was in immediately prior to the work performed by the Grantor.
2. SVCA hereby declares as follows:
 - 2.1. SVCA hereby grants, imposes, and conveys, for the benefit of the Grantor's Property, a perpetual, non-exclusive easement over, under, upon and across the SVCA Easement Area allowing the Grantor to construct, install, operate, inspect, maintain, repair, modify, replace, remove, and update the Facilities as further depicted on Exhibit [REDACTED] hereto.
 - 2.2. SVCA authorizes Grantee or Grantee's duly appointed agent(s) to periodically enter onto the SVCA Easement Area to inspect and assess the Facilities' physical condition and functionality, and to determine if Grantor or Grantor's duly appointed agent has accomplished any Grantee- or Grantee's duly appointed agent(s)-directed maintenance and/or repair of said Facilities as determined per Paragraph 1.5, above. Paragraph 3.1 advance visitation notice provisions below also apply. Notwithstanding the foregoing, Grantor shall be solely responsible for all maintenance and/or repair of said Facilities as set forth in Paragraph 1 above.

- 2.3. If at any time that Grantee or Grantee's duly appointed agent(s) reasonably determines that the Facilities located on the SVCA Easement Area pose an immediate hazard to life and limb, or endanger property, or adversely affect the safety and operations of a public way, due to failure of, damage to, or non-maintenance of said Facilities, and that the situation is so adverse as to preclude advance visitation notice to SVCA, SVCA authorizes Grantee or Grantee's duly appointed agent(s), without prior advance visitation notice to SVCA by Grantee or by Grantee's duly appointed agent(s), to access onto the SVCA Easement Area to take any mitigation or preservative actions that Grantee or Grantee's duly appointed agent(s) determine necessary. Notwithstanding the foregoing, Grantor shall be solely responsible for any costs incurred by Grantee pursuant to Paragraph 1.8 above.
3. Grantee hereby declares as follows:
 - 3.1. Unless circumstances described in Paragraphs 1.7 and/or 2.3 above exist, Grantee or Grantee's duly appointed agent(s) shall provide to Grantor and SVCA a minimum of (2) two work days advance notice of any visit.
4. The Parties further agree to the following general terms and conditions:
 - 4.1. This Declaration shall be perpetual in duration, shall constitute covenants running with the land, and shall be binding on the undersigned and all successors, assignees, devisees, or transferees of the parties and shall, in all respects, attach to the individual properties legally described in this Declaration. Each of the properties shall be subject to this Declaration, and all subsequent owners, successors and assigns of the properties shall take said real property subject to this Declaration, and;
 - 4.2. This Declaration may not be amended or abrogated, in part or entirely, without the express written consent of all Parties hereto, and;
 - 4.3. This Declaration shall survive and apply to any subsequent divisions the properties legally described in this Declaration.
 - 4.4. Nothing herein contained shall be deemed to be a gift or dedication of any portion of real property described herein to the general public, or for any public use or purpose whatsoever, except as may be specifically provided herein.
 - 4.5. In case any one or more of the provisions contained in this Declaration shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
 - 4.6. If, by reason of any default or breach on the part of any Party in the performance of any of the provisions of this Declaration, a legal action is instituted, the substantially prevailing party shall be entitled to an award of its attorneys' fees and costs incurred in connection therewith.

