

Recorded at the request of:
Contra Costa County Flood
Control & Water Conservation
District

After recording return to:
Contra Costa County
Public Works Department
Real Property Division
255 Glacier Drive
Martinez, CA 94553
Attention: D. Kramer

GRANT OF EASEMENT

For good and valuable consideration, including but not limited to the agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a political subdivision of the State of California, (hereinafter "DISTRICT"), hereby grants to THE CITY OF PINOLE, a municipal corporation (hereinafter "GRANTEE"), a nonexclusive right to a perpetual easement and right of way for installing, constructing, reconstructing, removing, replacing, repairing, upgrading, maintaining, operating and using a 24 inch storm drain pipe and appurtenances thereto, and for no other purposes whatsoever, along and in all of the hereinafter described parcel of land situated in the County of Contra Costa, State of California, described as follows:

FOR DESCRIPTION AND PLAT MAP, SEE ATTACHED EXHIBITS "A' AND "B"

The easement herein granted runs over the real property in the County of Contra Costa, State of California described on Exhibit "C" attached hereto and made a part hereof

The foregoing grant is made subject to the following terms and conditions:

1. **PRIMARY USE OF THE PROPERTY** The primary use of the Property subject to this easement (hereinafter the "Property") is for Flood Control purposes, including, but not limited to, the right by the District or Contra Costa County to enter onto the property to perform maintenance or improvement of the Property and the flood control facilities located on or adjacent to the Property, to conduct studies, and to allow authorized representatives, entities and others to perform activities sanctioned by the District or Contra Costa County. GRANTEE acknowledges and agrees that the use just described constitutes the primary use of the Property and that any and all rights granted or implied by this Grant of Easement are secondary and subordinate to the primary use of the Property by the DISTRICT, its successors and assigns. GRANTEE shall not, at any time, use or permit the public to use the easement area in any manner that will interfere with or impair the DISTRICT's primary use of the Property. GRANTEE shall not fence said easement without the prior written approval of the DISTRICT, and shall remove any fencing when requested by DISTRICT to do so. GRANTEE shall not otherwise obstruct the easement area.

2. **DISTRICT TITLE:** GRANTEE hereby acknowledges DISTRICT's title to the Property and agrees never to assail or resist said title.
3. **CONSTRUCTION AND MAINTENANCE ACTIVITIES:** (a) GRANTEE shall, prior to any construction, reconstruction, remodeling, excavation, installation or plantings within the easement area, submit specific plans and specifications to the DISTRICT for review and approval. Such approval, together with any additional requirements to be in the form of a written permit issued by DISTRICT to GRANTEE, which approval shall not be unreasonably delayed or withheld.

(b) Normal maintenance by GRANTEE of its facilities within the easement area, including inspection and cleaning of existing pipelines, shall not require prior notice to the DISTRICT. GRANTEE shall perform maintenance of its facilities so as to prevent damage to the site.
4. **DAMAGE TO DISTRICT PROPERTY:** Any and all DISTRICT Property, facilities, landscaping or other improvements, removed or damaged as a result of the use of the easement area by GRANTEE, or any other person or entity acting under GRANTEE's direction or control, shall, at DISTRICT's discretion and direction, be repaired or replaced by DISTRICT, with all reasonable costs and expenses to be paid by GRANTEE (including but not limited to engineering costs and legal costs of collecting any unpaid expenses) or shall be repaired or replaced by GRANTEE, at the sole cost and expense of GRANTEE, equivalent to or better than their existing condition. In the event that GRANTEE fails to commence the required work within thirty days after being directed to do so by DISTRICT, or such reasonable extension as DISTRICT may agree to in writing, or fails to complete the required work within a reasonable time thereafter, DISTRICT may perform or complete the work at the expense of GRANTEE, which expense GRANTEE agrees to pay to DISTRICT promptly upon demand, including but not limited to engineering costs and any legal expenses incurred to collect such costs.
5. **DAMAGE TO GRANTEE'S FACILITIES:** Except as provided in Paragraph 7 below, DISTRICT shall have no responsibility for the protection, maintenance, or damage to GRANTEE's facilities, appurtenances or improvements caused by or resulting from DISTRICT's use of the Property or work or operation thereon. It shall be the sole responsibility of GRANTEE to provide and maintain adequate protection and surface markings for its own facilities.
6. **NON-EXCLUSIVE EASEMENT:** The easement granted hereunder is non-exclusive. This easement is subject and subordinate to all existing rights, rights of way, licenses, reservations, franchises and easements of record, or that would be evident from a physical inspection or accurate survey of the Property, in and to the Property. If GRANTEE damages the facilities or improvements of any existing user, GRANTEE shall repair or replace such facilities at GRANTEE's sole cost and expense. Nothing contained herein shall be construed to prevent DISTRICT from granting other easements, franchises, licenses or rights of way over said lands, provided however,

that said subsequent uses do not unreasonably prevent or obstruct GRANTEE's easement rights hereunder. DISTRICT shall promptly notify GRANTEE in writing of any such subsequent grants.

7. **INDEMNIFICATION:** GRANTEE agrees to indemnify, defend and hold harmless DISTRICT for the GRANTEE's share of liability, as determined by a court of law, for any damage, injury or death of or to any person or the property of any person, including attorneys and expert fees, arising out of the willful misconduct or the negligent acts, errors or omissions of GRANTEE, its officers, employees, agents and volunteers, in its exercise of this easement or use of the Property.

DISTRICT agrees to indemnify, defend and hold harmless GRANTEE for DISTRICT's share of liability, as determined by a court of law, for any damage, injury or death of or to any person or the property of any person, including attorneys and expert fees, arising out of the willful misconduct or the negligent acts, errors or omissions of DISTRICT, its officers, employees, and agents, in the exercise of this License or use of the Property.

8. **NO WARRANTIES:** GRANTEE understands and acknowledges that DISTRICT makes no representations, warranties or guarantees of any kind or character, express or implied, with respect to the Property, and GRANTEE is entering into this transaction without relying in any manner on any such representation or warranty by DISTRICT.

9. **ABANDONMENT:** In the event GRANTEE shall cease to use the easement herein continuously for a period of one year, or in the event GRANTEE abandons its facilities or fails to use the easement for the purpose for which it is granted, then all rights of GRANTEE in and to said lands shall thereupon cease and terminate and shall immediately revert to and vest in DISTRICT or its successors. Upon any such termination of GRANTEE's rights, GRANTEE shall, upon request by DISTRICT, and at GRANTEE's sole cost and expense, remove all of its facilities from the easement area and restore said Property to its original condition. Upon the failure of GRANTEE to do so, this work may be performed by DISTRICT at GRANTEE's expense, which expense GRANTEE agrees to pay to DISTRICT upon demand. GRANTEE shall execute any Quitclaim Deeds required by DISTRICT in this regard.

10. **NO ASSIGNMENT OF EASEMENT:** Subject to Paragraph 14 below, no rights granted hereunder shall be transferred, apportioned or assigned without the prior written consent of DISTRICT.

11. **NO SECONDARY RIGHTS:** Nothing herein contained shall be deemed to construe that access or other secondary rights are conveyed by this document over any of DISTRICT's adjacent lands lying outside of the aforesaid strip of land above described.

12. **ENTIRE AGREEMENT:** This grant of easement contains the entire agreement between the parties hereto and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.
13. **CONSTRUCTION:** This grant of easement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this grant of easement and their counsel have read and reviewed this grant of easement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this grant of easement.
14. **SUCCESSORS AND ASSIGNS:** This indenture and all of the covenants herein contained shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, this Grant of Easement is signed and executed this _____ day of _____, 2012.

DISTRICT:

CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT,
a political subdivision of the State of
California

GRANTEE:

CITY OF PINOLE,
a municipal corporation

By: _____
Name: _____
Its: Chair, Board of Supervisors

By: Belinda B. Espinosa
Belinda B. Espinosa
Its: City Manager

ATTEST:

By: Patricia Athenour
Patricia Athenour, MMC, City Clerk

REVIEWED AS TO FORM:

By: Bernard J. [Signature]
City Attorney

STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

)
) ss.
)

On _____, before me, Clerk of the Board of Supervisors, Contra Costa County, 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: _____
Deputy Clerk

STATE OF CALIFORNIA

COUNTY OF Contra Costa

)
) ss.
)

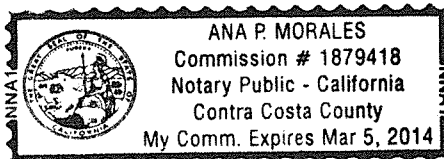
On 2/14/12, before me, Ana P. Morales, a Notary Public, personally appeared Beltrich B. Aguirre, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their 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.



Notary Public



DK:mf

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ROBERT A. KARN & ASSOCIATES, INC.
707 Rock Avenue, Fairfield, California 94533 Phone: (707) 435-8999 Fax: (707) 435-9988

Project No. A06053
September 15, 2010
Revised 10/20/11

EXHIBIT A

LEGAL DESCRIPTION

**A 15' WIDE PRIVATE STORM DRAIN EASEMENT OVER A PORTION OF A
PARCEL DESCRIBED IN THAT CERTAIN DEED TO CONTRA COSTA
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,
RECORDED IN THE OFFICE OF THE CONTRA COSTA COUNTY
RECORDER FEBURARY 24, 1958 IN LIBER 3125 AT PAGE 330 OF OFFICIAL
RECORDS, LOCATED IN THE CITY OF PINOLE, CONTRA COSTA COUNTY,
STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS
FOLLOWS:**

PARCEL 5126

BEGINNING at a point on the Northwest line of Parcel 1 as said parcel is shown in that "Certificate of Compliance for Lot Line Adjustment" recorded in the office of the Contra Costa County Recorder April 9, 2010, Document 2010-0070986 of Official Records, said point being North 52°53'08" East, 18.68 feet from the Northwest corner thereof; thence from said Point of Beginning southwesterly along said Northwest line South 52°53'08" West, 15.13 feet to a point; thence leaving said Northwest line North 44°41'04" West, 7.05 feet to a point on the Southeast line of Parcel One as said parcel is shown in that "Deed" recorded in the office of the Contra Costa County Recorder January 19, 1956, Liber 2692 at Page 53 of Official Records; thence northeasterly along said Southeast line North 65°13'00" East, 15.95 feet to a point; thence leaving said Southeast line South 44°41'04" East, 3.61 feet to the POINT OF BEGINNING, containing 79.91 square feet, more or less.

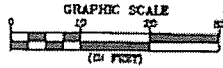
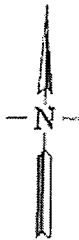
A plat (Exhibit B) showing the above described easement is attached hereto and made a part hereof.



RAK
CIVIL ENGINEERS

ROBERT A. KARN
& ASSOCIATES, INC.

707 BECK AVENUE 94533
FAIRFIELD, CALIFORNIA
Phone: (707) 435-9999 Fax: (707) 435-9988
e-mail: rak@rakengineers.com



POINT OF BEGINNING
PARCEL 5126

S 44°41'04" E, 3.61'

N 65°13'00" E, 15.95'

N 44°41'04" W, 7.05'

3.55'

15.13'

N 52°53'08" E, 18.68'

STATE OF CALIFORNIA
2692 OR 53, 2857 OR 527
CONTRA COSTA
COUNTY RECORDS

340.01'
S 52°53'08" W 358.69' (TOTAL)

CONTRA COSTA COUNTY
FLOOD CONTROL DISTRICT
96 OR 118, 3125 OR 330
CONTRA COSTA COUNTY
RECORDS

PARCEL 1
CERTIFICATE OF COMPLIANCE
FOR LOT LINE ADJUSTMENT
DOC. NO. 2010-70986
CONTRA COSTA COUNTY
RECORDS



Robert A. Karn

EXHIBIT B

PLAT TO ACCOMPANY THE DESCRIPTION OF PARCEL 5126 BEING
A 15' WIDE PRIVATE STORM DRAIN EASEMENT OVER A PORTION
OF THAT PARCEL PER LIBER 3125, PAGE 330.

CONTRA COSTA COUNTY RECORDS
PINOLE, CONTRA COSTA COUNTY, CALIFORNIA

SCALE: 1"=20' SEPTEMBER 15, 2010

REVISED 10/20/11 SHEET 1 OF 1

ADD053/DWG/CCCF&WCD - AccessLine-PrivateSD01.dwg

CCCF&WCD DRAWING NO. FA 20,044

EXHIBIT C

Legal Description of Burdened Property

The real property situated partly in the City of Pinole and partly in the County of Contra Costa, State of California, described in the Deed from East Bay Municipal Utility District to Contra Costa County Flood Control and Water Conservation District dated December 20, 1957, and recorded in the Official Records of Contra Costa County on February 24, 1958, in book 3125 at Page 330 as Instrument No. 10407.