

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO: _____

City of Santa Rosa- Utilities Department
Storm Water & Creeks Section- Supervising Engineer
69 Stony Circle
Santa Rosa CA 95401

Project/Property: _____
APN(s): _____

Santa Rosa, California

**DECLARATION OF COVENANTS REGARDING MAINTENANCE OF
STORM WATER BMP FACILITIES**

This Declaration of Covenants Regarding Maintenance of Storm Water BMP Facilities (“Agreement”) is made on this _____ day of _____, 20____, by _____ (“Landowner”) _____ [if business entity, ADD type].

RECITALS

- A. Landowner is the fee simple owner of certain real property located in the City of Santa Rosa (“City”), Sonoma County, California, [INSERT lot numbers, and development description; APN numbers] and more fully described in Exhibit A to this Agreement (“Property”).
- B. The City’s National Pollutant Discharge Elimination System (“NPDES”) Municipal Separate Storm Sewer System (“MS4”) Permit, Order number R1-2009-0050, issued by the North Coast Regional Water Quality Control Board, requires the City to implement and enforce specific requirements for the construction and maintenance of onsite storm water management facilities/best management practices (collectively, “BMP”) for development, redevelopment, and other applicable projects with the goal of mitigating impacts to storm water quality and runoff volume discharges into the MS4.
- C. Provisions of Chapter 17-12 and other applicable sections of the Santa Rosa City Code shall apply to the construction, inspection and maintenance of BMP facilities and the enforcement of MS4 Permit requirements.

D. On _____, _____ [INSERT DATE and WHO (City Engineer OR Chief Building Official)] approved Landowner's [Improvement Plans OR Building Permit Site Plan] ("Plan") _____ [INSERT Plan or Permit Number] and a Final Standard Urban Stormwater Mitigation Plan ("SUSMP") for the Property which include provisions for the construction and maintenance of BMP facilities on the Property (the "BMP Facilities") by Landowner. The BMP Facilities required under the SUSMP may include both built and landscaping features. The _____ [Plan, SUSMP,] may be inspected at the City of Santa Rosa, Department of Utilities, Storm Water & Creeks Section, 69 Stony Circle upon appointment.

E. The ____ [Plan, SUSMP] requires that Landowner enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, Landowner hereby covenants, agrees and declares as follows:

1. Landowner shall, at its sole cost and expense, construct, inspect, and maintain the BMP Facilities in accordance with the Plan and the SUSMP.
2. In the event Landowner fails to maintain the BMP Facilities in good working condition as solely determined by the City, the City may enter upon the Property and take whatever steps it deems reasonably necessary to maintain and/or make in good working condition, such BMP Facilities. It is expressly understood that the City is under no obligation to maintain or repair the BMP Facilities, and in no event shall this Agreement be construed to impose such an obligation on the City.
3. In the event that the City performs work of any nature, or expends any funds in the performance of such work for labor, use of equipment, supplies, materials, or the like, due to failure of the Landowner to perform its maintenance obligations under this Agreement, as solely determined by City, Landowner shall reimburse the City within 60 days of receipt of notice for all costs incurred by the City to undertake such work. Costs shall include, but are not limited to, the actual cost of construction, maintenance and/or repair, and administrative costs directly related to such work.
4. Any violation of the Plan or SUSMP by Landowner shall be deemed a public nuisance under Chapter 1-30 of the Santa Rosa City Code and City shall be entitled to the remedies available to it under Chapter 1-30 in addition to those available to it under Chapter 17-12. The remedies identified herein shall be in addition to and cumulative of all other remedies, criminal or civil, which may be pursued by the City.

5. Landowner shall indemnify, defend and hold harmless the City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same relates to, or arises out of, the construction, presence, existence, inspection, or maintenance of BMP Facilities on the Property or the performance of this Agreement by Landowner, its officers, employees, agents, contractors or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of the City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Landowner or its agents under workers' compensation acts, disability benefits acts or other employees' benefits acts. If any judgment or claim against the City, its officials, agents, or employees, shall be entered, Landowner shall pay all cost and expenses in connection therewith.
6. If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
7. This Agreement shall be governed according to the laws of the State of California. The parties hereto agree that the forum for the adjudication of any dispute related to this Agreement shall be brought exclusively and solely in Sonoma County, California.
8. Landowner shall not assign this Agreement to a third party without the express prior written consent of the City, provided that such consent will not be unreasonably withheld and that such consent shall not be required for Landowner to sell or lease the property to a third party.
9. Landowner binds itself, its partners, successors, legal representatives and assigns to the City, and to the partners, successors, legal representatives and assigns of the City with respect to all promises and agreements contained herein.
10. This Agreement shall be recorded by Landowner, and shall: a) constitute a "covenant running with the land;" b) be binding upon Landowner and Landowner's successors, heirs, and assigns in perpetuity; and, 3) benefit the City of Santa Rosa, its successors, and assigns. Any breach of this Agreement shall render Landowner or Landowner's heirs, successors or assigns liable pursuant to the provisions of the Santa Rosa City Code.
11. Any notice, submittal or communication required or permitted to be served on Landowner or City may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class

postage, and addressed as indicated below, and depositing in the United States mail to:

City Representative:

Landowner or Landowner Representative:

City of Santa Rosa
Utilities Department
Storm Water & Creeks Section
Supervising Engineer
69 Stony Circle
Santa Rosa CA 95401

Name: _____
Address: _____

Executed as of the day and year first above stated.

LANDOWNER:

Name: _____

Signatures of Authorized Persons:

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

ATTACHMENTS:

- Exhibit A- Property Description
- Notary Acknowledgment