RECORDING REQUESTED BY:
TOWN ENGINEER

WHEN RECORDED RETURN TO:
Town Engineer
Town of Windsor
P. O. Box 100
Windsor, CA 95492-0100

File No:_____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Project Name:

Project Address/Lot Number:

Original Lot APN(s):

Windsor, California

DECLARATION OF COVENANTS RELATED TO THE MAINTENANCE OF STORM WATER LID BMP(S)

This Declaration of Covenants Related to Maintenance of permanent Storm Water Low Impact Design Best Management Practices (LID BMPs) ("Declaration") is made on this day,_____, by _____("Landowner").

RECITALS

A. Landowner is the fee simple owner of certain real property located in the Town of Windsor ("Town"), Sonoma County, California, at the address of: _____; and APN(s)_____more fully described as _____and Exhibit A to this Declaration ("Property"). The property is part of a larger development referred to herein as the "Project."

B. The Town's National Pollutant Discharge Elimination System ("NPDES") Municipal Separate Storm Sewer System ("MS4") Permit, issued by the North Coast Regional Water Quality Control Board, requires the Town to implement and enforce specific requirements for the construction and maintenance of onsite storm water management Low Impact Design best management practices (collectively, "LID BMPs") for development, redevelopment, and other applicable projects with the goal of mitigating impacts to storm water quality and runoff volume discharges to the Town's storm drain system (MS4) and/or to Waters of the State of California. Provisions of Town Municipal Code Title IX, Chapter 4 and other applicable sections of the Town Municipal Code shall apply to the construction, inspection and maintenance of LID BMPs and the enforcement of MS4 Permit requirements.

C. Provisions of Title IX, Chapter 4 and other applicable sections of the Town Code shall apply to the construction, inspection, and maintenance of the LID BMP(s) on the property and the enforcement of MS4 Permit requirements.

D. On _____, the Town Engineer approved Improvement Plans titled:

_____("Plans") including a Final Storm Water LID Plan ("FSWLIDS") for the Property which requires the construction and maintenance of the LID BMP(s) on the Property by Landowner. The LID BMP(s) required under the FSWLIDS may include both built and landscaping features.
The FSWLIDS, the regional Maintenance Guide, and the Stormwater Low-Impact Development Technical Design Manual ("LID Design Manual") may be inspected upon appointment at the Town of Windsor, Public Works Department, 8400 Windsor Road.

E. The Town's MS4 Permit and/or the FSWLIDS requires that the Landowner make and execute this Declaration.

DECLARATION OF COVENANTS

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

1. Landowner shall, at Landowner's sole cost and expense, construct, inspect and maintain such LID BMP(s) on the Property in perpetuity, all in accordance with the Plans, the FSWLIDS, LID Design Manual. Landowner shall ensure that all LID BMP(s) on the Property remain fully functional and that all areas identified in the Plans and FSWLIDS for treatment and/or volume capture discharge to the specified BMP Facility as designed. **Landowner and/or any entity designated in writing by Landowner and approved by the Town, assume all responsibility for conducting a maintenance inspection of the BMPs on the Property at least annually and shall submit an annual inspection report to the Town no later than September 1st of each year**. The Owner shall ensure that the LID BMP(s) on the Property will be maintained and fully functional until such time that the responsibility is legally transferred to an entity designated and trained to take over permanent responsibility for BMP Feature maintenance.

2. Landowner shall keep all records related to annual inspections of the LID BMP(s) on the property and all records related to LID BMP(s) maintenance by landowner for a period of at least five (5) years. The records shall include all corrections, repairs, and replacements of all LID BMPs on the Property. Landowner shall make these records available to the Town upon request.

3. In the event Landowner fails to maintain the LID BMP(s) on the Property in good working condition as solely determined by the Town, in the exercise of its reasonable discretion, and fails to repair within thirty (30) days following Town's written notice thereof to Landowner, the Town may enter upon the Property and take whatever steps it deems reasonably necessary to maintain and/or place in good working condition such LID BMP(s); provided, however, that such notice and opportunity to repair shall not be required when, in the Town's sole determination in the exercise of its reasonable discretion, the Town's immediate entry and repair are required in the interest of the public health, safety and welfare. It is expressly understood that the Town is under no obligation to maintain or repair the LID BMP(s) on the Property, and in no event shall this Declaration be construed to impose such an obligation on the Town. Landowner has no obligation with respect to any public LID BMPs which are annexed into the Town's 1982 Act Benefit Assessment District.

4. In the event that the Town 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 Declaration, as solely determined by Town, in the exercise of its reasonable discretion, Landowner shall reimburse the Town within sixty (60) days of receipt of notice for all costs incurred by the Town 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.

5. Any violation of the Plans, FSWLIDS, LID Design Manual, and/or Maintenance Guide by Landowner shall be deemed a public nuisance and the Town shall be entitled to the remedies available to it under Town Municipal Code Title IX, Chapter 4. The remedies identified herein shall be in addition to and cumulative of all other remedies, criminal or civil, which may be pursued by the Town.

6. Landowner shall indemnify, defend and hold harmless the Town and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, related 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 the LID BMP(s) on the Property or the performance of the covenants contained in or arising from this Declaration by Landowner, its officers, employees, agents, contractors or subcontractors, excepting only that resulting from the sole, active negligence or intentional misconduct of the Town, its employees, officials, or agents. This indemnification obligation is not restricted in any way by any limitation on 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 Town, its officials, agents, or employees, shall be entered, Landowner shall pay all cost and expenses in connection therewith, subject to the aforementioned exception for cost resulting from the sole, active negligence or intentional misconduct of the Town.

7. If any provisions of this Declaration 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.

8. This Declaration 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 Declaration shall be brought exclusively and solely in Sonoma County, California.

9. Landowner shall not assign this Declaration to a third party without the express prior written consent of the Town, provided that such consent will not be unreasonably withheld. However, such consent shall not be required for Landowner to sell or lease the property to a third party who expressly assumes Landowner's obligations hereunder pursuant to an Assignment and Assumption Agreement or similar document between Landowner and the third party, in a form reasonably acceptable to the Town.

10. Landowner binds itself, its partners, successors, legal representatives and assigns of the Town with respect to all promises and agreements of Landowner contained herein.

11. This Declaration 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, (c) benefit the Town of Windsor, its successors, and assigns. Any breach of this Declaration by Landowner shall render Landowner or Landowner's heirs, successors or assigns liable pursuant to the provisions of the Town Municipal Code. Upon a valid transfer of title to the Property from Landowner to a third party and Town's approval of an Assignment and Assumption Agreement or similar document between Landowner and the third party, Landowner shall be released from all responsibility under this Declaration.

12. Any notice, submittal or communication required or permitted to be served on Landowner or Town 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:

To Landowner: _____
_____
_____
Attention:_____

To Town: Town of Windsor
PO Box 100
Windsor, CA 95492-0100
Attention: Town Engineer

Executed as of the day and year first above stated. **LANDOWNER:**

Name: _____

Address: _____

_____

Signatures of Authorized Persons:

By:_____ By:_____

Name:_____ Name:_____

Title: _____ Title:_____

ATTACHMENTS:
(1) Exhibit A- Legal Property Description
(2) Exhibit B- Storm Water LID BMP Site Map
(3) Exhibit C- Storm Water LID BMP Construction Details

Exhibit A – Legal Property Description

Exhibit B – Storm Water LID BMP Site Map

Exhibit C – Storm Water LID BMP Construction Details

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
Date *Here Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

_____,

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 _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

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