

RECORDING REQUESTED BY:

City of Hesperia
Development Services Department

AND WHEN RECORDED MAIL TO:

City of Hesperia
Development Services Department
9700 Seventh Avenue
Hesperia, CA 92345

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COVENANT AND AGREEMENT REGARDING WATER QUALITY MANAGEMENT PLAN AND STORMWATER
BEST MANAGEMENT PRACTICES TRANSFER, ACCESS AND MAINTENANCE**

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

**Covenant and Agreement Regarding Water Quality Management Plan and Stormwater
Best Management Practices Transfer, Access and Maintenance**

OWNER NAME: _____

PROPERTY ADDRESS: _____

APN: _____

THIS AGREEMENT is made and entered into in

_____, California, this _____ day of

_____, by and between

_____, hereinafter

referred to as Owner, and the CITY OF HESPERIA, a political subdivision of the State of California, hereinafter referred to as "the City";

WHEREAS, the Owner owns real property ("Property") in the State of California, County of San Bernardino, located at [STREET ADDRESS] within the City of Hesperia, more commonly referred to as San Bernardino County Tax Assessor Parcel No. [APN Number] specifically described in Exhibit "A" and depicted in Exhibit "B", each of which is attached hereto and incorporated herein by this reference; and

WHEREAS, at the time of initial approval of the development project known as

_____ within the Property described herein, the City required the project to employ Best Management Practices, hereinafter referred to as "BMPs," to minimize pollutants in urban runoff; and

WHEREAS, the Owner has chosen to install and/or implement BMPs as described in the Water Quality Management Plan, dated _____, on file with the City and incorporated herein by this reference, hereinafter referred to as "WQMP", to minimize pollutants in stormwater and urban runoff and to minimize other adverse impacts of stormwater and urban runoff; and

WHEREAS, said WQMP has been certified by the Owner and reviewed and approved by the City; and

WHEREAS, the Owner is aware that periodic and continuous maintenance, including, but not necessarily limited to, filter material replacement and sediment removal, is required to assure peak performance of all BMPs in the WQMP and that, furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs.

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. Owner shall comply with the WQMP.
2. All maintenance or replacement of any BMPs specified within the approved WQMP is the sole responsibility of the Owner in accordance with the terms of this Agreement.
3. Owner hereby provides the City's designee complete access, of any duration, to the BMPs and their immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by the City, no advance notice, for the purpose of inspection, sampling, testing of the BMPs, and in case of emergency, to undertake all necessary repairs or other preventative measures at owner's expense as provided in paragraph 5 below. The City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property. Denial of access to any premises or facility that contains WQMP features is a breach of this Agreement and may also be a violation of the Clean Water Act, the California Water Code, and/or the City's NPDES Permit Implementation regulations. If there is reasonable cause to believe that an illicit discharge or breach of this Agreement is occurring on the premises then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction in addition to other enforcement actions. Owner recognizes that the City may perform routine and regular inspections, as well as emergency inspections, of the BMPs. Owner or Owner's successors or assigns shall pay City for all costs incurred by City in the inspection, sampling, testing of the BMPs within thirty (30) calendar days of City invoice.
4. Owner shall use its best efforts diligently to maintain all BMPs in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of any material(s) from the BMPs and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. As may be requested from time to time by the City, the Owner shall provide the City with documentation identifying the material(s) removed, the quantity, and disposal destination, testing construction or reconstruction.
5. In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within five (5) business days of being given written notice by the City, the City is hereby authorized to cause any maintenance necessary to be done and charge the entire cost and expense against the Property and/or to the Owner or Owner's successors or assigns, including administrative costs, attorney's fees and interest thereon at the maximum rate authorized by the City Code from the date of the notice of expense until paid in full. Owner or Owner's successors or assigns shall pay City within thirty (30) calendar days of City invoice.
6. The City may require the owner to post security in form and for a time period satisfactory to the City to guarantee the performance of the obligations stated herein. Should the Owner fail to perform the obligations under the Agreement, the City may, in the case of a cash bond, act for the Owner using the proceeds from it, or in the case of a surety bond, require the surety (ies) to perform the obligations of this Agreement.

7. The City agrees, from time to time, within ten (10) business days after request of Owner, to execute and deliver to Owner, or Owner's designee, an estoppel certificate requested by Owner, stating that this Agreement is in full force and effect, and that Owner is not in default hereunder with regard to any maintenance or payment obligations (or specifying in detail the nature of Owner's default). Owner shall pay all costs and expenses incurred by the City in its investigation of whether to issue an estoppel certificate within thirty (30) calendar days after receipt of a City invoice and prior to the City's issuance of such certificate. Where the City cannot issue an estoppel certificate, Owner shall pay the City within thirty (30) calendar days of receipt of a City invoice.

8. Owner shall not change any BMPs identified in the WQMP without an amendment to this Agreement approved by authorized representatives of both the City and the Owner.

9. City and Owner shall comply with all applicable laws, ordinances, rules, regulations, court orders and government agency orders now or hereinafter in effect in carrying out the terms of this Agreement. If a provision of this Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

10. In addition to any remedy available to City under this Agreement, if Owner violates any term of this Agreement and does not cure the violation within the time already provided in this Agreement, or, if not provided, within thirty (30) calendar days, or within such time authorized by the City if said cure reasonably requires more than the subject time, the City may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the Owner with the terms of this Agreement. In such action, the City may recover any damages to which the City may be entitled for the violation, enjoin the violation by temporary or permanent injunction without the necessity of proving actual damages or the inadequacy of otherwise available legal remedies, or obtain other equitable relief, including, but not limited to, the restoration of the Property and/or the BMPs identified in the WQMP to the condition in which it/they existed prior to any such violation or injury.

11. This Agreement shall be recorded in the Office of the Recorder of San Bernardino County, California, at the expense of the Owner and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth, and also a lien in such amount as will fully reimburse the City, including interest as herein above set forth, subject to foreclosure in event of default in payment.

12. In event of legal action occasioned by any default or action of the Owner, or its successors or assigns, then the Owner and its successors or assigns agree(s) to hold the City harmless and pay all costs incurred by the City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same shall become a part of the lien against said Property.

13. It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien there against.

14. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of

this Agreement. Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Owner shall provide a copy of such notice to the City at the same time such notice is provided to the successor.

15. Time is of the essence in the performance of this Agreement.

16. Any notice to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to the address set forth below. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

17. Owner agrees to indemnify, defend (with counsel reasonably approved by the City) and hold harmless the City and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the City on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Owner's indemnification obligation applies to the City's "active" as well as "passive" negligence but does not apply to the City's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782, or to any claims, actions, losses, damages, and/or liabilities, to the extent caused by the acts or omissions of any third party contractors undertaking any work (other than field inspections) or other maintenance on the Property on behalf of the City under this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IF TO CITY:

City of Hesperia _____

9700 Seventh Avenue _____

Hesperia, CA 92345 _____

IF TO OWNER:

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

NOTARIES ON FOLLOWING PAGE(S)

A notary acknowledgement is required for recordation.

ACCEPTED BY:

Assistant City Manager

Date: _____

FOR: Maintenance Agreement, dated _____, for the project known as _____

(APN) _____,
As described in the WQMP dated _____.

OWNER:
Signature: _____

Name: _____

Title: _____

Date: _____

OWNER:
Signature: _____

Name: _____

Title: _____

ATTACHMENT 1
(Notary Acknowledgement)

EXHIBIT A
(Legal Description)

EXHIBIT B
(Map/illustration)