

WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF PALM DESERT  
73-510 FRED WARING DRIVE  
PALM DESERT, CA 92260

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**WATER QUALITY MANAGEMENT PLAN AND STORMWATER BMP  
MAINTENANCE AND RIGHT OF ENTRY AGREEMENT**

**THIS WATER QUALITY MANAGEMENT PLAN AND STORMWATER BMP MAINTENANCE AND RIGHT OF ENTRY AGREEMENT** (“Agreement”) is made and entered into in the City of Palm Desert, California, this \_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, hereinafter referred to as “Owner” and the City of Palm Desert (“City”), a municipal corporation. This Agreement applies to property located at \_\_\_\_\_, APN No. \_\_\_\_\_ in the County of Riverside, State of California. The Agreement is subject to the following recitals:

**RECITALS**

**WHEREAS**, the Owner owns real property (“Property”) in the City of Palm Desert, County of Riverside, State of California, more specifically described in Exhibit “A” and depicted in Exhibit “B”, each of which exhibits is attached hereto and incorporated herein by this reference;

**WHEREAS**, at the time of initial approval of Owner’s development project known as \_\_\_\_\_ within the Property, the City required the project to employ Best Management Practices, hereinafter referred to as “BMPs,” to minimize pollutants in urban runoff;

**WHEREAS**, the Owner has chosen to install and/or implement BMPs as described in the Water Quality Management Plan, on file with the City, hereinafter referred to as “WQMP”, to minimize pollutants in urban runoff and to minimize other adverse impacts of urban runoff;

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

**WHEREAS**, the BMPs, with installation and/or implementation on private property and draining only private property, are part of a private facility with all maintenance or replacement, therefore, the sole responsibility of the Owner in accordance with the terms of this Agreement;

**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. Responsibility for Operation and Maintenance of BMPs: Owner shall diligently 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.
2. Right of Access: Owner hereby provides the City or 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 City's Director of Public Works ("Director"), no advance notice, for the purpose of inspection, sampling, testing of the BMPs, and in case of emergency, to undertake, in the City's sole discretion, necessary repairs or other preventative measures at Owner's expense as provided in paragraph 3 below. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.
3. City Maintenance at Owner's Expense: In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within five (5) 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 to the Owner or Owner's successors or assigns, including administrative costs, attorneys fees and interest thereon at the maximum rate authorized by the Civil Code from the date of the notice of expense until paid in full. The City, at its sole election, may make these costs to be a lien upon the property that may be collected at the same time and in the same manner as ordinary municipal taxes as provided in Government Code section 38773.5. Nothing in this section or this Agreement creates an obligation by the City to maintain or repair any BMP, nor does this section prohibit the City from pursuing other legal recourse against Owner.
4. Recording: This Agreement shall be recorded in the Office of the Recorder of Riverside 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.

5. Attorney's Fees: In event of legal action occasioned by any default or action of the Owner, or its successors or assigns, the Owner and its successors or assigns agree(s) to 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.
6. Covenant: 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.
7. Binding on Successors: 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.
8. Indemnity and Insurance: The Owner, its heirs, successors, executors, administrators and assigns agree to defend, indemnify and holds harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City and which are in any way connected with the construction, operation, presence, existence or maintenance of the BMP by the Owner, or from any personal injury or property damage that may result from the City or other public entities entering the Property under Sections 2 or 3 of this Agreement.
9. Time of the Essence: Time is of the essence in the performance of this Agreement.
10. Notice: 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.

IF TO CITY:

IF TO OWNER:

City of Palm Desert  
73-510 Fred Waring Drive  
Palm Desert, CA 92260

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

CITY: City of Palm Desert

OWNER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name

Its: \_\_\_\_\_

Title: \_\_\_\_\_

OWNER:

By: \_\_\_\_\_

Name

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Date

**NOTARIES PAGE**

EXHIBIT A  
*(LEGAL DESCRIPTION)*

**EXHIBIT B**  
*(MAP/ILLUSTRATION/O&M PORTION OF WQMP)*