

RECORDED AT THE REQUEST OF
City Clerk
City of San Buenaventura
A California Charter Municipal Corporation

WHEN RECORDED RETURN TO
City Clerk
City of San Buenaventura
501 Poli Street, Room 204
Ventura, California 93001

(Space Above Line for Recorder's Use)

Exempt Recording per
Government Code §6103

**Declaration of Covenant and Deed Restriction For
Post-Construction Stormwater Quality Control Measures
Maintenance and Access**

Assessor Parcel No.(s): _____

Owner: _____

Property Address: _____

Grading Permit Number: _____

City Drawing File Number: _____

Tract/Lot Number (as applicable): _____

Subdivision Number (as applicable): _____

This Covenant and Deed Restriction ("Agreement") is made and executed on this ____ day of _____, 20____, by and between _____

(print name and title/company)

("Owner") and the City of San Buenaventura ("City"), a California charter law municipal corporation, located in the County of Ventura, State of California.

1. **Recitals.** This **Covenant and Deed Restriction** is entered into with reference to the following:

A. Owner owns real property (“Property”) in City’s jurisdiction, more specifically described in attached Exhibit “A” and shown on the map in attached Exhibit “B”, each of which is incorporated by this reference.

B. At the time of initial approval of the above listed Grading Project Number and/or City Drawing File Number, City required the project to employ on-site control measures to minimize pollutants in urban runoff that would otherwise be discharged into storm drain systems operated and maintained by City.

C. Owner intends to install and maintain the following Device(s) as the on-site stormwater control measure(s) to minimize pollutants in urban runoff as shown in the attached Exhibit “B”, which is incorporated by this reference: [list all Device(s) noting model and number installed onsite]

D. The Device(s) shall be installed in accordance with City approved Stormwater Compliance Study submittal dated _____ and specifications shown on City Grading Permit number _____ and City Drawing number _____ on file with the City, and incorporated by this reference.

E. The Device(s), installed on private property and draining only private property, is a private facility and all maintenance and/or replacement of the Device(s) is the sole responsibility of Owner in accordance with the terms of this Covenant and Deed Restriction.

F. Owner is aware that periodic and continuous maintenance, including, without limitation, filter material replacement, landscaping maintenance, and trash/debris/sediment removal, is required to assure proper performance of the Device(s), and that 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. In

addition, Owner is required to provide an annual report to the City by September 1st each year or as otherwise requested by the City, including the Record of Inspection & Maintenance for Stormwater Post-Construction Best Management Practices documentation, to verify on-going maintenance is conducted.

G. A purpose of this Agreement is to provide notice and disclosure to subsequent purchasers or transferees of limitations associated with the Property.

NOW, THEREFOR, the undersigned Owner certifies that it is the owner of fee title to the Property, and for valuable consideration, covenants, acknowledges, and agrees:

2. **ACCESS.** Owner grants a license to City's designee for complete access, of any duration, to the Device(s) and its 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 Device(s), and, in case of emergency, to undertake all necessary repairs or other preventative measures at Owner's expense as provided below. City will make every effort at all times to minimize and avoid interference with Owner's use of the Property.
3. **MAINTENANCE.** Owner will use its best efforts to diligently maintain the Device(s) in a manner assuring peak performance at all times, consistent with the site-specific operations and maintenance plan developed for Device(s). All reasonable precautions will be exercised by Owner and Owner's representative or contractor in the removal and extraction of material(s) from the Device(s) and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. By September 1st of each year or as otherwise requested by the City, Owner will provide City with Record of Inspection & Maintenance for Stormwater Post-Construction Best Management Practices documentation identifying the date of inspection, type and quantity of material(s) removed and disposal destination, and other maintenance performed, and shall retain such documentation for a period of not less than five (5) calendar years.
4. **DEFAULT.** Should Owner, or its successors or assigns, fail to accomplish the necessary maintenance contemplated by this Agreement within ten (10) days after being given written notice by City, City is authorized to take any maintenance action needed and charge the entire cost and expense to Owner or Owner's successors or assigns, including administrative costs, attorneys' fees and interest

at the maximum rate authorized by law from the date of notice of any expenses incurred by City until paid in full.

5. **SECURITY.** City may require Owner to post security in form and for a time period satisfactory to City to guarantee the performance of this Agreement. Should Owner fail to perform the obligations under this Agreement, City may, in the case of a cash bond, act for Owner using the proceeds from it, or in the case of a surety bond, require the surety to perform the obligations of the Agreement. As an additional remedy, Director may cause the withdrawal of any previous stormwater related approval with respect to the property on which a Device(s) has been installed until such time as Owner repays to City its reasonable costs.
6. **RECORDATION.** This Agreement will be recorded in the Ventura County Recorder's Office at Owner's expense and will constitute notice to all successors and assigns of title to the Property of Owner's obligations, and also a lien in such amount as will fully reimburse City, including interest, subject to foreclosure in event of default in payment.
7. **ENFORCEMENT.** In the event City initiates legal action occasioned by any default or action of Owner, or its successors or assigns, then Owner and its successors or assigns agree to pay all costs incurred by City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same may become a lien against the Property.
8. **RUNS WITH PROPERTY.** The burdens and benefits in this Agreement constitute covenants that run with the Property and constitute a lien upon the Property.
9. **SUCCESSORS.** This Agreement is binding upon the heirs, successors, executors, administrators and assigns of the parties. The term "Owner" includes not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner will notify any successor to title of all or part of the Property about the existence of this Agreement. Owner will provide this notice before such successor obtains an interest in all or part of the Property. Owner will provide a copy of such notice to City's designee at the same time such notice is provided to the successor.
10. **IRREVOCABLE.** This Agreement and the provisions hereof are irrevocable and nonmodifiable except by the express written consent of the City, which shall have the right, but no the responsibility, to enforce every provision hereof.

11. **COSTS AND EXPENSES.** In the event that Owner fails to abide by any of the requirements hereunder, Owner hereby agrees to pay all costs and expenses incurred by the City in securing performance of such obligation, including reasonable attorney's fees and costs, and City may record such costs as a special assessment against Property or as a lien on Property if Owner fails to pay such costs within thirty (30) days of City providing Owner with an invoice detailing such costs.

12. **INDEMNIFICATION.** Owner agrees to indemnify, defend, and hold harmless City and its officers, agents, employees, and other authorized representatives from any and all liability, claims, demands, damages (whether contract or tort, including personal injury, death, or property damage), costs and financial loss, including all costs and expenses of litigation or arbitration, which result or are claimed to have resulted directly or indirectly from the wrongful or negligent acts, errors or omissions of Owner or any of its employees, agents, or contractors in fulfilling Owner's obligations provided for in this Agreement, except cases of sole negligence on the part of the City or its officers, agents, employees or subcontracts.

13. **TIME IS OF ESSENCE.** Time is of essence in the performance of this Agreement.

14. **NOTICES.** Any notice to a party required or called for in this Agreement will be served in person, or by deposit in the U.S. Mail, first-class postage prepaid, to the address set forth below. Notice will 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 to the other party.

If to City:

City of Ventura

Environmental Sustainability, Public Works

Attn: Peter F. Shellenbarger

336 Sanjon Road

Ventura, CA 93001

If to Owner:

Telephone # _____

IN WITNESS THEREOF, Owner has executed this Covenant and Deed Restriction as of the date first written above.

Owner:

Entity: _____

By: _____

(Signature)

Name: _____

(Print Name)

Title: _____

Owner:

Entity: _____

By: _____

(Signature)

Name: _____

(Print Name)

Title: _____

Notary Acknowledgement Required on Following Page

- C: City Clerk (1)
- Public Works Department (2) – Land Development and Environmental Sustainability
- Owner (1)

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.

ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____

(here insert name and title of officer)

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 _____

(Seal)

Exhibit “A”
Legal Description

Exhibit “A” (Legal Description) instructions:

Exhibit “A” to the Declaration of Covenant and Deed Restriction For Post-Construction Stormwater Quality Control Measures Maintenance and Access shall be a legal description of the affected parcel(s).

Exhibit “A” shall adhere to the following:

1. A licensed land surveyor or civil engineer must prepare Exhibit “A” in an 8 ½” by 11” format. Exhibit “A” is a legal description of the lot(s) or parcel(s) on which the Storm Water Quality Control Measures are being installed. If the control measures treat the storm water runoff from more than one legal lot or parcel, then the legal description shall include all lots for which the control measures provide storm water treatment.
2. The legal description must be signed and sealed by the professional preparing the document.

NOTE: All lettering must be clear and legible in accordance with requirements of the County Records Office. Suggest a minimum lettering size of 1/10 inch.

Exhibit “B”

Site Map

Exhibit “B” (Site Map) instructions:

Exhibit “B” to the Declaration of Covenant and Deed Restriction For Post-Construction Stormwater Quality Control Measures Maintenance and Access shall be a site map depicting the location of all long-term post-construction storm water quality control measures/devices.

Do not submit dark background maps.

Exhibit “B” shall include the following:

1. Provide a “to scale” 8 ½” by 11” site map showing boundaries of the site (generally property lines), building footprint, and hardscape (sidewalks, curbs, asphalt, etc.) Clearly distinguish between soft and hard surfaces on the site map. If the entire site cannot be clearly depicted on a single sheet then multiple 8 ½” by 11” sheets may be used.
2. Identify locations of existing and new onsite storm drain facilities. Show points of connection between the onsite private system and any public storm drain system.
3. Clearly note all points of storm water discharge from the site including surface discharge.
4. With legend, show locations of expected sources of pollution generation (outdoor work and storage areas, trash enclosures, fueling areas, industrial clarifiers, wash-racks, etc).
5. Include a legend that indicates types and locations of permanent post-construction storm water quality control measures that will be installed or constructed to permanently control storm water pollution. Use the exact title (e.g. INF-3: Bioretention) used in the Ventura County Technical Guidance Manual for Storm Water Quality Control Measures. Include all pollution prevention, treatment, and containment measures deployed at site(s).

NOTE: All lettering must be clear and legible in accordance with requirements of the County Records Office. Suggest a minimum lettering size of 1/10 inch. Hatching and/or shading should not be used on exhibits due to difficulty with legibility when documents are imaged.