

## **STANDARD CC&R PROVISION LANGUAGE FOR FUNDING AND MAINTENANCE OF O&M PLAN FOR WATER QUALITY BMPS**

**The CC&Rs applicable to the Property shall include the following provision (or a substantially similar provision approved by the City Attorney):**

The homeowners association shall implement, and fund implementation of, the Operation and Maintenance (“O&M”) Plan for the Property, which was approved by the City as part of the Water Quality Management Plan (“WQMP”) required for development of the Property, and shall operate, inspect, maintain, repair, and replace the Best Management Practices (“BMPs”) described in the O&M Plan for the Property, which includes:

- a. Description of all post-construction BMPs (non-structural and structural),
- b. Description of the Property owner’s(s’) responsibilities and required training of persons performing BMP implementation, operation, maintenance, and inspection,
- c. Implementation frequency and operating schedule,
- d. Inspection/maintenance frequency and schedule,
- e. Specific BMP implementation, maintenance, and inspection activities,
- f. Description of all permits required for the implementation, operation, and maintenance of BMPs,
- g. Forms to be used in documenting implementation, operation, maintenance, and inspection activities,
- h. Recordkeeping requirements.

A copy of the approved O&M Plan is described in the current WQMP for the project, as it may be amended from time to time according to its terms, which is on file with the City of Tustin Community Development Department, and is incorporated herein by this reference. The homeowners association shall maintain a copy of the current WQMP at a location on the Property.

The Property shall be, and the homeowners association shall ensure that the Property is, used and maintained in full compliance with the provisions of the O&M Plan and the Tustin City Code section 4900 et seq., as it may be amended from time to time. The City shall have the right to inspect the Property for the purpose of verifying compliance with this provision. The homeowners association shall indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and contractors from and against any and all liability, expense, including costs and legal fees, and claims of damage of any nature whatsoever including, but not limited to, death, bodily injury, personal injury, or property damage arising from or connected with the City inspection of the Property except where such liability, expense, or claim for damage results from the sole negligence or willful misconduct of the City or its elected officers, employees, agents, or

contractors. The City shall be an intended third-party beneficiary to this provision. The City shall have the right and authority, but not the obligation, to enforce this provision by any legal or equitable means, or by any method available to the homeowners association as provided elsewhere in the CC&Rs, against the Declarant, homeowners association, Owners, their successors and assigns, or other persons in possession of the Property. This provision shall not be amended or terminated without the written approval of the City of Tustin Community Development Department.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Building Official  
City of Tustin  
300 Centennial Way  
Tustin, CA 92780-3767

Space Above This Line For Recorder's Use Only

**DECLARATION OF RESTRICTIONS**

This Declaration of Restrictions ("Declaration") is made by the undersigned property owner(s) ("Declarant").

**Recitals**

WHEREAS, Declarant is the owner of the following real property ("Property") [Provide Address, Legal Description and APN Number]: and

WHEREAS, Declarant intends to establish a common plan for the improvement and development of the Property and to subject the Property to the conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration, for the benefit of its future owners and their successors in interest in the Property.

NOW, THEREFORE, Declarant declares that the Property described above is held and will be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration, all of which are declared and agreed to be in furtherance of water quality requirements described below in this Declaration for the benefit of the City of Tustin's municipal separate storm drain system. All of the conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration will run with the land and will be binding on all persons having or acquiring any right, title, or interest in the Property, or any part thereof, and will inure to the benefit of the City of Tustin ("City"). Each grantee of a conveyance or purchaser under a contract or agreement of sale covering any right, title, or interest in any part of the Property, by accepting a deed or contract of sale or agreement of purchase, accepts the document subject to, and agrees

to be bound by, any and all of the conditions, covenants, equitable servitudes and restrictions set forth in this Declaration.

### **Water Quality Requirements**

1. Operation and Maintenance (“O&M”) Plan for Best Management Practices (“BMPs”)

Declarant and each successive owner of an interest in all or any part of the Property (“Owner(s)”) shall, throughout the period of their respective ownership, implement, and fund implementation of, the Operation and Maintenance (“O&M”) Plan for the Property, which was approved by the City as part of the Water Quality Management Plan (“WQMP”) required for development of the Property, and shall operate, inspect, maintain, repair, and replace the Best Management Practices (“BMPs”) described in the O&M Plan for the Property, which includes:

- a. Description of all post-construction BMPs (non-structural and structural),
- b. Description of the Property owner’s(s’) responsibilities and required training of persons performing BMP implementation, operation, maintenance, and inspection
- c. Implementation frequency and operating schedule,
- d. Inspection/maintenance frequency and schedule,
- e. Specific BMP implementation, maintenance, and inspection activities,
- f. Description of all permits required for the implementation, operation, and maintenance of BMPs,
- g. Forms to be used in documenting implementation, operation, maintenance, and inspection activities,
- h. Recordkeeping requirements.

A copy of the approved O&M Plan is described in the current WQMP for the project, as it may be amended from time to time according to its terms, which is on file with the City of Tustin Community Development Department, and is incorporated herein by this reference.

2. Compliance with [City Municipal Code] and Consent to Inspect

Owners shall use and maintain the Property in full compliance with the provisions of the O&M Plan and the Tustin City Code section 4900 et seq., as it may be amended from time to time. Owners hereby consents to inspection of the Property by an inspector authorized by the City Manager, or his or her designee, for the purpose for verifying compliance with the provisions of this Declaration.

## **Indemnification**

3. Owners agree to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and contractors from and against any and all liability, expense, including costs and legal fees, and claims of damage of any nature whatsoever including, but not limited to, death, bodily injury, personal injury, or property damage arising from or connected with the City inspection of the Property during their respective period of ownership, except where such liability, expense, or claim for damage results from the sole negligence or willful misconduct of the City or its elected officers, employees, agents, or contractors.

## **Term and Termination**

### 4. Term

Unless terminated in accordance with Paragraph 5, below, or by law, the conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration shall run with the land in perpetuity, and shall be binding upon Declarant and each successive Owner during the ownership of all or any part of the Property and upon each person having any interest therein derived through the owner thereof. No Owner of all or any part of the Property shall be personally liable for any violation of any conditions, covenants, equitable servitudes, or restrictions set forth in this Declaration occurring before acquiring an interest in all or a part of the Property or after such interest is transferred, in fee, to another successor in interest to the Property. Each Owner shall provide actual notice of this Declaration and its terms to its respective successor(s) in interest to the Property prior to transfer of said interest to such successor(s) in interest.

### 5. Termination of Declaration

The conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration shall terminate upon termination of the WQMP applicable to the Property in accordance with its terms. Upon termination of the WQMP applicable to the Property, the Owner may request that the City execute a recordable document approved by the City approving and acknowledging termination of this Declaration. A recorded document duly executed and acknowledged by the Director of Community Development of City, or his or her designee, approving termination of this Declaration shall be conclusive evidence of such termination.

## **Enforcement by the City**

6. The City of Tustin is benefited by this Declaration and shall be entitled to, but not obligated to, enforce this Declaration in an administrative proceeding or judicial proceeding at law or in equity against any person(s) violating or attempting to violate any condition, covenant, equitable servitude, or restriction provided for herein, either to restrain such violation or to recover damages.

### **Severability**

7. Invalidation of any one of these conditions, covenants, equitable servitudes, or restrictions by judgment or court order will not affect any of the other provisions, which will remain in full force and effect.

### **Counterparts**

8. This Declaration may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

### **Attorneys' Fees**

9. If the City or any Owner files an action or brings any proceeding against the other arising from this Declaration, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorneys' fees and costs to be fixed by the court. A party not entitled to recover its costs shall not recover attorneys' fees. No sum for attorneys' fees shall be included in calculating the amount of a judgment for purposes of deciding whether a party is entitled to its costs or attorneys' fees.

### **Amendment**

10. No modification, amendment, addition to, or alteration of the terms of this Declaration, whether written or verbal, shall be valid unless made in writing, formally approved and executed by the City and current Owner(s) of the Property, and duly recorded.

### **Authority of Signatories to Declaration**

11. Each person executing this Declaration represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Declaration on behalf of the parties for which execution is made. Each party represents and warrants to the other that the execution of this Declaration and the performance of such party's obligations hereunder have been duly authorized and that the Declaration is valid and legally binding on such party and enforceable in accordance with its terms.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first written below.

**“CITY” / “COVENANTEE”  
CITY OF TUSTIN**

\_\_\_\_\_  
Mariam Madjlessi, P.E.  
Deputy Building Official

ATTEST:

\_\_\_\_\_  
Erica N. Yasuda, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
David Kendig, City Attorney

\_\_\_\_\_  
Print Name of Property Owner

\_\_\_\_\_  
Print Name of Property Owner

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**ACKNOWLEDGMENT**

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, \_\_\_\_\_  
(insert name and title of the 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)