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| **NO FEE DOCUMENT**  Government Code §6103  RECORDING REQUESTED BY AND  WHEN RECORDED MAIL TO:  CITY OF ELK GROVE  8401 Laguna Palms Way  Elk Grove, CA 95758  Attn: City Clerk  Project Name:  Project No:  A.P.N.: | The Above Space For Recorder’s Use Only |

**STORM WATER TREATMENT**

**ACCESS AND MAINTENANCE AGREEMENT**

**THIS AGREEMENT** is made and entered into on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ 2014, by and between the City of Elk Grove, a California municipal corporation, hereinafter referred to as (City), and Ridge Elk Grove L.P., a California Limited Partnership, hereinafter referred to as (Owner).

1. The Owner owns real property in the City of Elk Grove, County of Sacramento, State of California, more specifically described in the legal description and plot map on Exhibit A attached hereto and incorporated herein by this reference (Property).
2. The Owner has chosen to install a storm water treatment system, as identified and more specifically described on the approved improvement plans titled “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” specifically made a part of this agreement by this reference and as shownon Exhibit B attached hereto and incorporated herein by this reference. The system consists of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and includes all channels or other conveyances built to convey storm water to the system, as well as all structures, improvements and vegetation provided to control the quantity and quality of the storm water (System).
3. System is a private facility and all maintenance or replacement is the sole responsibility of the Owner in accordance with the terms of this Agreement.
4. Owner shall not destroy or remove the System from the Property nor modify or otherwise allow the System to exist in any manner that lessens its effectiveness. Owner shall, at its sole expense, adequately maintain the System in good working order acceptable to the City and in accordance with the approved Improvement Plans for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Exhibit B, and in accordance with all federal, state or local laws and regulations. Adequate maintenance is herein defined as maintaining the System in good working condition so that the system continues to operate as originally designed and approved.
5. Sediment accumulation resulting from the normal operation of the System shall be managed appropriately by the Owner. Owner shall provide for the removal and disposal of accumulated sediments. Disposal of accumulated sediments shall not occur on the Property. Any disposal or removal of accumulated sediments or debris shall be in compliance with all federal, state and local laws and regulations.
6. Owner hereby provides the City or City’s designee complete access and a right-of-entry onto the Property in order to access the System and its immediate vicinity at any time, upon twenty-four (24) hour advance notice in writing, for any duration for the purpose of inspection, sampling and testing of System. This right-of-entry upon the Property also includes when the City has a reasonable basis to believe that a violation of this Agreement, or the City’s Municipal Code, a guideline, criteria, or other written directive related to the management of storm water, or to any state issued municipal storm water permit, is occurring, has occurred, or threatens to occur. City shall make every effort at all times to minimize interference with Owner’s use of the Property and/or System.
7. Owner shall conduct a minimum of one (1) annual inspection of the System before the wet season. This inspection shall occur between August 1st and October 1st each year. The Owner shall submit an annual report to the City Engineer on or before July 1st of each year, that documents the dates of inspection and maintenance of the System, identifies the materials or sediments removed, the volume of the materials or sediments removed, and the disposal destination of the materials or sediments during the preceding twelve (12) months.
8. In the event Owner, or its successors, transferees or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within fourteen (14) days of written notice by the City, the City is hereby authorized to access the Property and to cause any maintenance to the System necessary to be done. City shall have the right to charge the entire cost and expense to the Owner, the costs and expenses incurred may also be a lien against the property, and the City may file a suit to compel the maintenance necessary or any combination thereof. The costs charged shall include administrative costs and interest thereon at the maximum rate authorized by the Civil Code from the date of notice of expense until paid in full.
9. The Owner shall indemnify, hold harmless and defend the City and its authorized agents, officers, officials and employees from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims and payments, including attorneys fees claims or which might arise or be asserted against the City that are alleged or proven to result or arise from the construction, presence, existence or maintenance of the treatment measure(s) by the Owner or the City. In the event a claim is asserted against the City, its authorized agents, officers, officials, or employees, the City shall promptly notify Owner and Owner shall defend at its sole expense any suit or other action based on such claim. If any judgment or claims against the City, its authorized agents, officers, officials, or employees shall be allowed, the Owner shall pay for all costs and expenses in connection therewith. This section shall not apply to any claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims and payments, including attorney fees claims which arise due to the sole negligence or willful misconduct of the City.
10. This Agreement shall be recorded by the City, after the execution date of this Agreement as stated above, in the Office of the Recorder of Sacramento County, California, at the sole expense of the Owner and shall constitute notice to all successors, transferees, and assigns of the title to said Property of the obligations herein set forth and shall not be removed from the Property unless a release is executed and recorded by the City.
11. In the event of any administrative, legal or equitable action or other proceeding instituted by any person or entity not a Party to this Agreement challenging the validity of any provision of this Agreement, the Owner and City shall promptly meet and confer as to the most appropriate means of responding to such Third Party Challenge; provided, however, that any such response shall be consistent with the provisions of subsections (a) and (b) below.

#### (a) City shall tender the complete defense of any Third Party Challenge to Owner, and Owner shall accept such tender and, the following shall apply:

##### Owner shall indemnify City against any and all fees and costs arising out of the defense of such Third Party Challenge; and

##### Owner shall control the defense and/or settlement of such Third Party Challenge and may take any and all actions it deems necessary and appropriate in its sole discretion in connection therewith; provided, however, that Owner shall seek and secure City's consent to any settlement of such Third Party Challenge, which consent shall not unreasonably be withheld or delayed.

(b)  If Owner should fail to accept City's tender of defense as set forth in subsection (a), City shall defend such Third Party Challenge and control the defense and/or settlement of such Third Party Challenge, and may take any and all actions it deems necessary and appropriate in its sole discretion in connection therewith; provided, however, that City shall seek and secure Owner's consent to any settlement of such Third Party Challenge, which consent shall not unreasonably be withheld or delayed.  Owner shall indemnify City against any and all fees and costs arising out of the defense of such Third Party Challenge by City.

1. It is the intent of the parties hereto that burdens and benefits in this Agreement shall constitute covenants that run with the Property.
2. The obligations herein undertaken shall be binding upon the heirs, successors, transferees, executors, administrators and assigns of the parties hereto. Owner shall notify any successor to title of the Property, or any portion thereof, 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 and provide a copy of such notice to the City at the same time such notice is provided to the successor.
3. Time is of the essence in the performance of this Agreement.
4. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired.
5. 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. This Agreement shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

*End of text on this page.*

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

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| CITY OF ELK GROVE,  a Municipal Corporation  8401 Laguna Palms Way  Elk Grove, CA 95758  By:  Laura S. Gill, City Manager  ATTEST:  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Jason Lindgren, City Clerk  APPROVED AS TO FORM:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­­­­\_\_\_  Jonathan P. Hobbs, City Attorney | PRINCIPAL:  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print Name & Title)  By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print Name & Title)  By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print Name & Title) |

**EXHIBIT “A”**

**[Legal Description and plot map of the Real Property]**

**Show the location of the system on the plot map “Exhibit B”**

State of California )

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County of \_\_\_\_\_\_\_\_\_\_ )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person (s) whose names (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 is true and correct.

Witness my hand and official seal.

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

(Signature) (Seal)