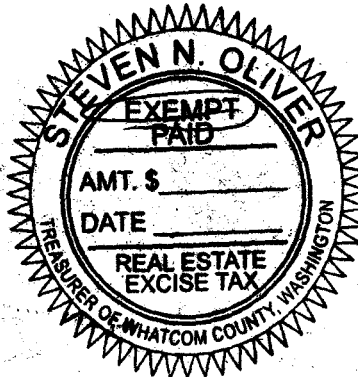




Request of: JOAN MARR

After recording return to:  
CITY OF FERNDAL  
PO BOX 936  
FERNDAL, WA 98248



10-22-13  
JA

DOCUMENT TITLE:	MAINTENANCE COVENANT AND ACCESS EASEMENT
RELATED DOCUMENT NUMBER:	DOUGLAS PLACE II AF# 21310023002
GRANTOR:	DOUGLAS PLACE LLC, A Washington Limited Liability Company
GRANTEE:	CITY OF FERNDAL, a Washington municipal corporation
ABBREVIATED LEGAL DESCRIPTION:	Ptn W 1/2 of NW 1/4 Sec 30/TWP 39N/ R2E ADD'L LEGAL DESCRIPTION ON EXHIBIT "A" OF DOCUMENT
ASSESSOR'S TAX PARCEL NUMBER:	380230 053437 0000

### MAINTENANCE COVENANT AND ACCESS EASEMENT

THIS MAINTENANCE COVENANT AND ACCESS EASEMENT ("Agreement") is made this 11 day of Sept., 2013, between Douglas PLACE LLC ("Developer"), and the CITY OF FERNDAL, a municipal corporation of the State of Washington ("City").

#### RECITALS

WHEREAS, Developer is the owner and developer of certain real property located in the City which property is legally described on Exhibit A attached hereto and incorporated by reference and which is commonly known as Douglas Place Div. II ("Development").

WHEREAS, The City has approved construction plans submitted by Developer for the Development. The Development contains on-site stormwater facilities as described in the approved construction plans, which together with any other stormwater facilities that may hereafter be constructed on the Development are hereinafter referred to as the "Stormwater Facility."

WHEREAS, Ferndale Municipal Code ("FMC") 13.34.060 encourages Low Impact Development (LID) best management practices (BMPs) and requires a maintenance covenant for each lot containing or served by bioretention facilities.

WHEREAS, the maintenance covenant shall identify requirements and liability for preservation and maintenance of low impact development facilities approved under FMC 13.34.060 and privately held in individual or undivided ownership or intended for public ownership, shall restrict conversion of LID facilities, and shall grant the City right-of-entry to allow inspection, and emergency maintenance and repair and which maintenance covenant shall be recorded against the Development.

WHEREAS, the City requires that Developer enter into this Agreement as a condition of the City's approval of construction plans and/or approval of the final plat, or issuance of a letter of completion in the case of a commercial project, for the Development.

**NOW, THEREFORE**, the City and Developer agree as follows:

- 1. Developer.** The term "Developer" as used herein is intended to and does include the person or entity responsible for the Development to which this Agreement applies as well as the successors and assigns of such Developer, including without limitation, subsequent owners of lot(s) or interest(s) in the Development including any homeowners' or other association owning or having responsibility for maintenance of common areas in the Development, including ownership or maintenance of the Stormwater Facility.
- 2. Covenant to Maintain and Repair.** Developer covenants, that it shall, at its sole expense, at all times maintain the Stormwater Facility (bioretention facility) in good working order, condition and repair, clear of all debris, and in compliance with all applicable state and local rules, regulations, and guidelines, including those adopted from time to time by the City. Maintenance shall be performed per "Exhibit A" which is attached hereto and incorporated by reference.
- 3. Developer Designee.** No later than at the time of recording of the final plat or issuance of a letter of completion for a commercial project, Developer shall notify the City in writing of the person or persons responsible for compliance with Developer's obligations under this Agreement ("Developer Designee") and the Developer will notify the City in writing within 30 days of any future change in the Developer Designee. Developer expressly agrees that the Developer Designee shall have the authority to bind Developer, its successors and assigns with respect to the matters described in this Agreement.
- 4. Items of Maintenance, Repair and Inspection; Maintenance and Inspection Schedule and Records.** Developer's inspection and maintenance of the Stormwater Facility will comply with FMC 13.34.140, as now constituted or as may be amended in the future which includes but is not limited to "removal of silt, litter and other debris from all catch basins, inlets and drainage pipes; grass cutting and vegetation removal; and necessary replacement of landscape vegetation. An inspection shall be conducted no less than annually, or as specified in the development's Stormwater Maintenance Manual, and "any identified maintenance found must be addressed in a

timely manner as determined by the City...to ensure proper functioning of the Stormwater Facility." Developer shall provide the City's Public Works Stormwater Division with annual (or such other time frame determined by the City) records of installation and of all maintenance and repairs and shall retain such records for 20 years, all as required by FMC 13.34.170.

**5. Easement.** Developer hereby grants to the City, its employees, independent contractors and designees, a nonexclusive easement for access, ingress and egress over, across, upon, through and under the Development from time to time at the City's sole discretion to inspect, sample, and monitor components of the Stormwater Facility and discharges therefrom. Such non-exclusive easement includes the right to inspection by the City when the City has a reasonable basis to believe that a violation of FMC 13.34 is occurring or has occurred and to enter when necessary for correction of a violation of this chapter pursuant to FMC 13.34.180 through 13.34.210, inclusive, and pursuant to the enforcement procedures of FMC 8.08.120 through 8.08.140, inclusive, all as currently constituted or as may be amended in the future.

**6. Failure to Perform Covenant.** If the City determines that Developer is not in compliance with this Agreement, enforcement shall be by way of FMC 13.34.180 through 13.34.210 inclusive. In addition to, or as an alternative and not as an election of remedies, enforcement may be by way of an action for breach of the terms of the Agreement herein.

**7. City has No Obligation to Perform.** Developer, for itself and its successors and assigns, including all future owners of lots or interests in the Development, agrees that the City has no obligation to exercise or to perform any maintenance or repair of the Stormwater Facility, and that the City shall have no liability to Developer or to any of Developer's successors or assigns, including future owners of lots or interests in the Development, in connection with the maintenance or repair of the Stormwater Facility, or the failure to perform the same.

**8. Reimbursement.** If the City exercises its right to enter the Development to inspect the Stormwater Facility when the City has a reasonable basis to believe that a violation of FMC 13.34 is occurring or has occurred and when the City exercises its right to enter the Development when necessary for correction of a violation of FMC 13.34, Developer shall reimburse the City for all of its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice. Such costs and expenses shall be added to the daily penalty allowable for a civil infraction, if a civil infraction is issued.

**9. Indemnification.** Developer agrees to indemnify, defend and hold harmless the City, its employees, independent contractors and designees from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from Developer's failure to perform its obligations under this Agreement or the exercise of the City's rights herein.

**10. Run with the Land.** The rights and obligations contained herein shall run with the land and inure to the benefit of, and shall be binding upon, the City and Developer and their respective successors and assigns including, without limitation, subsequent owners of lots or interests in the Development and including any homeowner's or other association owning and/or having responsibility for maintenance

of the common areas in the Development, including maintenance of the Stormwater Facility.

**11. Failure of Association to Act; Creation of Lien and Personal Obligation.**

The Developer covenants and agrees that the obligations contained herein to maintain the Stormwater Facility belong jointly to such association having the responsibility for maintenance of the Stormwater Facility as well as to the individual lot or interest owners. Failure of such association to meet the obligations herein regarding the Stormwater Facility, does not relieve the individual lot or interest owners from such obligations. As such, any enforcement action by the City pursuant to this Agreement may be had against not only such association, but also against the individual lot or interest owners, as well. All applicable and allowable fees and costs herein as provided in the Ferndale Municipal Code, shall be a continuing lien upon each lot or interest against which such fees and costs are imposed or to which they apply, on a pro rata basis, and shall also be the personal obligation of each owner of such lot or interest at the time the fees and costs come due. The personal obligation for such fees and costs shall pass to the lot or interest owner's successor in title. No lot or interest owner may exempt himself/herself from liability for such fees and costs by abandoning or not using his/her lot or interest or otherwise.

**12. Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in any appeal therefrom. The term "action" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

**13. Assignment.** The obligations of Developer, and of subsequent owners of lots or interests in the Development, under this Agreement may not be assigned except (a) in connection with the sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations), or (b) with the prior written consent of the City to a homeowners' or other association that owns and maintains the common areas of the Development, including the Stormwater Facility.

**14. Authority.** If Developer is an entity, the individual executing this Agreement on behalf of Developer represents and warrants to the City that he or she has the full power and authority to do so and that Developer has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

**IN WITNESS WHEREOF**, Developer and the City have executed this instrument on the date first written above.

**DEVELOPER:**  
DOUGLAS PLACE LLC.

By: Douglas S. Man  
Title: Manager

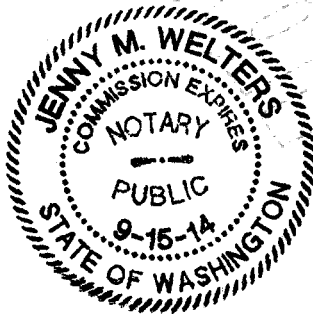
**CITY OF FERNDALE**, a Washington  
municipal corporation

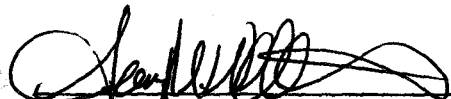
By: Gary Jensen  
Title: GARY JENSEN, MAYOR

STATE OF WASHINGTON )  
County of Whatcom )ss.

This is to certify that on the 12 day of September, 2013 before me, the undersigned Notary Public in and for the State of Washington, personally appeared GARY JENSEN, to me known to be the Mayor of the CITY OF FERNDAL, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of the CITY OF FERNDAL.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

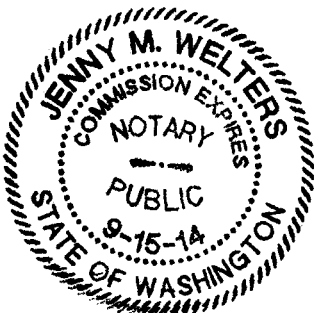


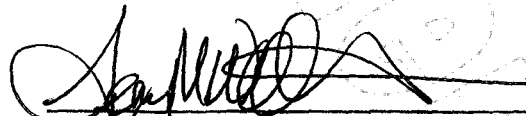
  
NOTARY PUBLIC in and for the  
State of Washington, residing at  
Bellingham  
My commission expires: 9-15-14

STATE OF WASHINGTON )  
County of Whatcom )ss.

This is to certify that on the 11 day of September, 2013, before me, the undersigned Notary Public in and for the State of Washington, personally appeared Douglas Marr, to me known to be \_\_\_\_\_ of DOUGLAS PLACE LLC the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of DOUGLAS PLACE LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



  
NOTARY PUBLIC in and for the State of Washington,  
residing at Bellingham  
My commission expires 9-15-14

**"EXHIBIT A"**

**LEGAL DESCRIPTION OF**

**RAIN GARDEN EASEMENTS OVER PORTIONS OF THE FOLLOWING LOTS**

**Lot # 30**

The west 19.00 feet of the east 29.00 feet of the north 14.00 feet of the south 19.00 feet. OF Lot 30 of the Plat of Douglas Place Division II

**LOT # 34**

The west 19.00 feet of the east 29.00 feet of the north 14.00 feet of the south 19.00 feet. of Lot 34 of the Plat of Douglas Place Division II

**Lot # 35**

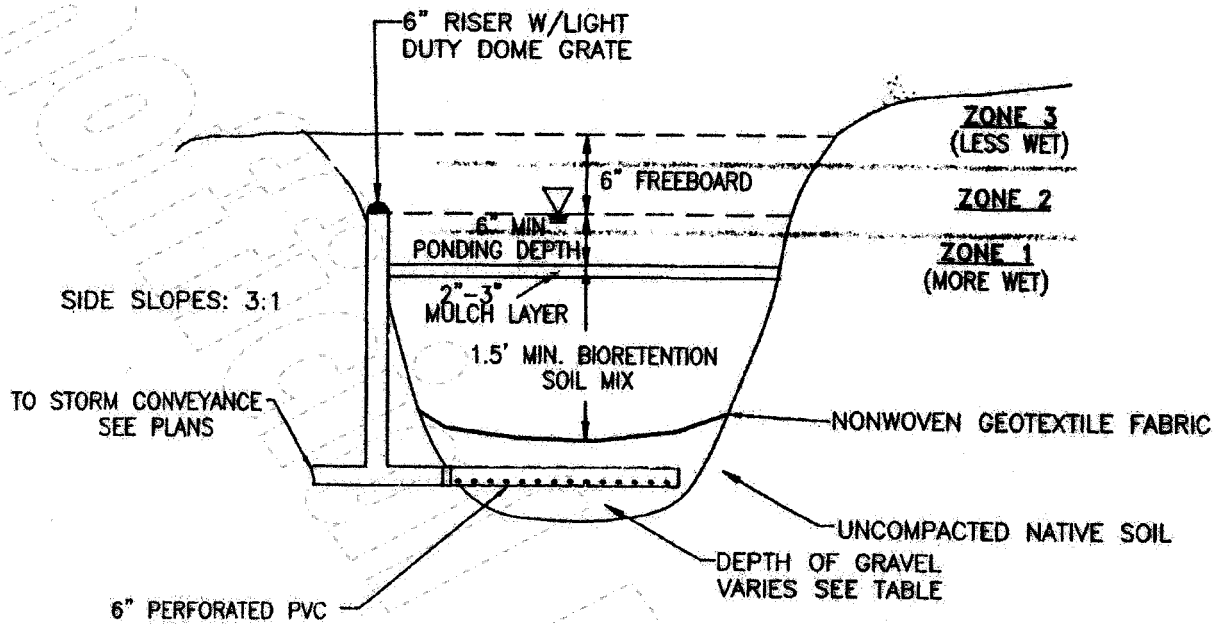
The west 19.00 feet of the east 29.00 feet of the south 14.00 feet of the north 19.00 feet. OF Lot 35 of the Plat of Douglas Place Division II

**Lot #36**

A portion of Lot 36 of the Plat of Douglas Place Division II more particularly described as follows:

Beginning at the southwest corner of said lot #36, thence N 01° 33' 49" East along the west line of said lot 36, 31.26 feet, thence N 57° 47' 31 E, 20.53 feet, thence S 01° 33' 49" W, 31.26 feet, to the north Right-of-way line of Clearview Road, thence S 57° 47' 31" W 20.53 to the Point of Beginning.

Less easements for Strom and utility right-of-ways



TO BE INSPECTED BY ENGINEER OF RECORD PRIOR TO OCCUPANCY.

**RAINGARDEN PEA-GRAVEL DEPTHS OVER-FLOW RISER ELEVATION**

LOT 30	RISER=57.80	GRAVEL=2'
LOT 34	RISER=52.50	GRAVEL=3'
LOT 35	RISER=54.00	GRAVEL=3'
LOT 36	RISER=53.00	GRAVEL=2.5'

**BIO-RETENTION SOIL MIX**

- DESIGN INFILTRATION RATE: 2 INCHES/HOUR.
- 65% TO 70% GRAVELLY SAND AND 30% TO 35% COMPOST (SEE SPECIFICATION BELOW).
- GRAVELLY SAND GRADATION PER ASTM D 422.
 

SIEVE SIZE	PERCENT PASSING
2-INCH	100
3/4-INCH	70-100
1/4-INCH	50-80
US No. 40	15-40
US No. 200	0-3
- THE SOIL MIXTURE SHOULD BE UNIFORM, FREE OF STONES, STUMPS, ROOTS OR OTHER SIMILAR OBJECTS LARGER THAN 2 INCHES.
- ON-SITE SOIL MIXING OR PLACEMENT NOT ALLOWED IF SOIL IS SATURATED OR SUBJECT TO WATER WITHIN 48 HOURS.
- COVER AND STORE SOIL ACCORDINGLY TO PREVENT WETTING OR SATURATION.
- TEST SOIL FOR FERTILITY AND MICRONUTRIENTS AND, IF NECESSARY, AMEND MIXTURE TO CREATE OPTIMUM CONDITIONS FOR PLANT ESTABLISHMENT AND EARLY GROWTH AT RATES RECOMMENDED BY AN INDEPENDENT LABORATORY SOIL TEST.
- PLACE SOIL IN LIFTS NOT EXCEEDING 6 INCHES.

**RAINGARDEN/BIORETENTION DETAIL**

NTS