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Skagit County Auditor

Return Address:  
City of Anacortes  
Planning and Community  
Development 904 6<sup>th</sup> Street  
Post Office Box 547  
Anacortes, WA 98221

### Drainage BMP Facility Maintenance Covenant

**Grantor(s)** hereinafter referred to as **Grantor**:

1. *Larry Berkeley*
- 2.

**Grantee: City of Anacortes**, hereinafter referred to as the **City**, a  
Political Subdivision under the Laws of the State of Washington.

**Legal Description** of property encumbered by covenant: Abbreviated: LOTS  
3 AND 4, BLOCK 102, MAP OF THE CITY OF ANACORTES, ACCORDING TO  
THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGES 4  
THROUGH 7, RECORDS OF SKAGIT COUNTY, WASHINGTON

**Common Name of the Development** of the property  
encumbered by covenant:

1307 5<sup>th</sup> Street, Anacortes

(if applicable, insert lot, Block, Plat Name), and/or as described in Exhibit(s)

Located in SE qtr. Sec. 13 Twp. 35 N., 01 Rge. E., W.M.

**Reference Number(s)** of documents assigned, released, or modified:

**Assessor's Property Tax Parcel/Account Number(s)** of property(s)  
encumbered by the drainage covenant: **P122022** 3772-102-004-0000

Grantor has a record interest in the property encumbered by the covenant and agrees that the obligations of Grantor shall inure to the benefit of and be binding upon the heirs, successors, and assigns. Grantor agrees that this covenant touches and concerns the land described in **Exhibit 1 of this agreement** and shall run with the land.

Grantor by execution of this covenant acknowledges that the benefits of this covenant inure to Grantor, downstream property owners, and the general public, and that the City as third-party beneficiary of this covenant has the right, but not the obligation, to enforce this covenant on behalf of downstream property owners and the general public. The City requires this covenant to protect private and public property, private and public drainage infrastructure, and natural resources of downstream property owners and the general public.

PERMIT # BLD-2024-0079

Grantor in consideration of real property described in Exhibit Page #1 and in consideration of other valuable consideration, receipt and sufficiency of which is hereby acknowledged, hereby covenants to perform regular inspections upon the drainage facilities installed, or to be installed, upon Grantor's property. These inspections shall compare the facility/BMP device to the standards described in the current Storm water Management Manual for Western Washington in use by the City of Anacortes (herein referred to as "the Manual") for all elements of the storm water drainage system. For any BMP facility approved by the City of Anacortes, but not included in the Manual; maintenance standards shall be as described in the manufacturer's operation and maintenance manual; which shall also be referred to as the Manual. As applicable, the system shall include the storm water conveyance pipes, ditches, swales, and catch basins; storm water flow regulation system detention ponds, vaults, pipes, retention ponds, flow regulation and control structures; infiltration systems, rain gardens and all other storm water quality or flow control system.

The inspections conducted on all facility/BMPs shall be performed by qualified personnel who have received professional training in the aspects of storm water management for which they are responsible to inspect. For example a person qualified to perform an inspection on a detention pond must demonstrate that they have received professional training specifically on detention pond maintenance and compliance with standards.

The City shall request a record of the inspection annually. The Grantor shall provide to the City a written record of the inspection performed and the condition of the facility/BMP upon request. The record shall provide an explanation of each maintenance component and potential defect identified in the maintenance standards in the Manual for each specific BMP/facility. Where measurements must be taken to (trash or debris exceeds 60% of the sump...) the actual field measurements must be included on the report. Pictures of each BMP facility shall be included, and the date(s) of the inspections must be clearly identified.



The scope of this covenant and right of entry shall be adequate to provide for the access, inspection, and maintenance of the storm water drainage system, and shall be subject to the following terms and conditions:

1. The City shall have the perpetual right of entry across adjacent lands of the Grantor for purposes of inspecting, auditing, or conducting required maintenance of the drainage BMP facility.
2. The facility specific maintenance standards contained in the Manual are intended to be conditions for determining if maintenance actions are required. The standards are not intended to be a measure of the facility's required condition at all times. Discovery through inspection that a facility's condition is in exceedance of a standard does not constitute a violation of this agreement.
3. Should a facility be discovered in a condition that constitutes an exceedance of any described standard, maintenance shall be performed on the following schedule:
  - a. Within nine months for typical maintenance of facilities, except catch basins.
  - b. Within three months for catch basins.
  - c. Within eighteen months for any maintenance that requires capital construction or expenditure over \$25,000
4. In the event that Grantor fails to complete the required maintenance within the identified time period, the City shall have the right to immediately and without further notice perform or contract with others to perform all maintenance necessary to return the facility/BMP to compliance with the standard. This work shall be performed at the sole expense of the Grantor.
5. If the City in its sole discretion determines that an imminent or present danger exists, that any condition exists that could constitute a threat to human health, welfare or the environment, or any condition exists that could cause the City to be found in violation of the Western Washington Phase II Municipal Storm water NPDES permit issued to the City of Anacortes, or any other environmental permit, the City may take any action required including beginning maintenance or repairs immediately at Grantor's expense without prior notice to Grantor. In such event, the City shall provide Grantor with a written statement and accounting of all work performed and the fees, charges, and expenses incurred in making such repairs. Grantor shall agree to reimburse the City or pay the City's vendors directly for all reasonable fees, charges, and expenses identified in the City's statement.
6. If the City is required to act as a result of Grantor's failure to comply with this covenant, the City may remove any obstructions and/or interferences that in the sole opinion of the City impair the operation of the drainage BMP facility or the maintenance thereof. Grantor agrees to hold the City, its officers, employees, and agents harmless from any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees, incurred by the removal of vegetation or physical interference from the drainage BMP facility.

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7. When exercising the maintenance provisions of the covenant, in the event of nonpayment, the City may bring suit to recover such costs, including attorney's fees, and upon obtaining a judgment, such amount shall become a lien against the property of Granter as provided in RCW 4.56.190.
8. Grantor covenants that the owners of the property described herein are the person or persons identified on page 1 of this covenant as Grantors, that they have the right to grant this covenant on the property, and that the title to the property is free and clear of any encumbrances which would interfere with the ability to grant this covenant.

Executed this 6<sup>th</sup> day of Feb 2024

**Grantors:**

Signature(s): Larry Berkley Larry Berkley Printed  
Name(s): \_\_\_\_\_

Title of Authorized  
Representative(s): (if  
signing on behalf of a  
corporation)

Deputy \_\_\_\_\_

Accepted and approved for the  
City of Anacortes:

[Signature] Date: 12-20-24  
Director  
City of Anacortes Department of  
Planning and Community  
Development Services

STATE OF WASHINGTON )  
 ) SS  
City of Anacortes )

On this day personally appeared before me, Larry Berkley and \_\_\_\_\_,  
to me known to be the individuals described in and who executed the foregoing agreement  
and acknowledged that he/she signed the same as his/her free and voluntary act and deed  
for the uses and purposes therein mentioned.

Given under my hand and official seal this 6<sup>th</sup> day of February, 2024



(Signature)  
Notary Public in and for the State of Washington

Robin Irving  
(Printed Name)  
Residing in Anacortes, Washington

My commission expires: 3-3-2025

LB

