

AFTER RECORDING RETURN TO:

City of Oregon City, City Recorder  
P.O. Box 3040  
Oregon City, Oregon 97045-0304

Planning File No.: \_\_\_\_\_

Tax Map & Lot: \_\_\_\_\_

GRANTOR: \_\_\_\_\_

## MAINTENANCE AGREEMENT AND ACCESS EASEMENT FOR PRIVATELY-OWNED STORMWATER MANAGEMENT FACILITIES

This MAINTENANCE AND ACCESS EASEMENT AGREEMENT (“**Agreement**”) is made between the CITY OF OREGON CITY, a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the “**City**”), and \_\_\_\_\_ (“**Grantor**”).

**This Agreement runs with the land and is binding on Grantor and its successors and assigns, including subsequent purchasers of property within the Development (defined below).**

### RECITALS

A. Grantor is the owner of certain real property located in the City of Oregon City, Clackamas County, Oregon, legally described on **Exhibit A** attached hereto and commonly known as \_\_\_\_\_, the “**Development**”. *Name of development, property address or tax lot*

B. The following stormwater management facilities (“**Stormwater Facilities**”) were constructed or will be constructed at the Development as further described below and depicted in **Exhibit B** (Site Plan, showing and identifying storm facilities):

<p><u><i>Grantor’s written description of each facility</i></u></p>
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C. The City has approved construction plans submitted by Grantor for the Development, including Stormwater Facilities as described above. The Stormwater Facilities are designed by a registered professional engineer to accommodate anticipated volume of runoff and to detain and treat runoff in accordance with City's Stormwater and Grading Design Standards and its amendments. The Stormwater Facilities enable development of property while mitigating the impacts of additional surface water and pollutants associated with stormwater runoff prior to discharge from the property to the public stormwater system.

D. Failure to inspect, maintain, repair, and replace the Stormwater Facilities after they are constructed can result in an unacceptable impact to the public stormwater system. To protect the owners of property within the Development, as well as owners of neighboring property, the City requires Grantor to enter into this Agreement as a condition to the City's approval of construction plans and building permit(s) for the Development. This Agreement confirms Grantor's, and Grantor's successors and assigns', obligation to inspect, maintain, repair, and replace the Stormwater Facilities. The term "**Owner(s)**" is used herein to refer to the owner or owners of any part of the Development on which Stormwater Facilities are located. "Owner(s)" include Grantor while Grantor owns any part of the Development on which Stormwater Facilities are located and includes any homeowners association owning common areas in the Development on which Stormwater Facilities are located.

E. In connection with its development of the Development, Grantor may divide the property within the Development into individual lots (each a "**Lot**" and collectively the "**Lots**"). The Stormwater Facilities for the Development will be maintained by the Owner(s). Therefore, although Grantor will be the sole owner responsible for constructing, inspecting, maintaining, repairing, and replacing the Stormwater Facilities while Grantor owns the entirety of the Development, upon Grantor's sale or transfer of ownership of any Lot, or part of the Development, those responsibilities will be transferred to the subsequent Owner(s).

F. The consideration for this Agreement is connection to the City's public stormwater system.

## **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Grantor agree as follows:

1. **Incorporation of Recitals.** The Recitals to this Agreement are incorporated into and made a part of this Agreement.
2. **Run with the Land.** The parties' rights and obligations contained herein shall run with the land and shall be binding upon the Grantor and its successors and assigns (including, without limitation, the Owner(s) of the Lot(s) and any homeowner's association owning common areas in the Development). Those rights and obligations shall inure to the benefit of the City, as well as its successors and assigns.
3. **Agreement to Maintain and Repair.** The Owner(s) shall, at their sole expense, themselves or through qualified independent contractors, at all times during their ownership of the property within the Development maintain the Stormwater Facilities 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 and including the City's Stormwater and Grading Design Standards) and the Operation and Maintenance Plan attached as **Exhibit C** of this Agreement.

4. **Agreement to Inspect.** The Owner(s) shall perform, at a minimum, annual inspections of all Stormwater Facilities covered by this agreement, per guidelines in **Exhibit C**, attached. The annual inspection required by this Agreement shall identify work necessary to repair or maintain facilities in good working order. The Owner(s) shall provide Oregon City Public Works Department with annual maintenance inspection reports, including identification of the corrective actions taken in response to the annual inspection. If needed, inspection forms can be obtained from the Oregon City Public Works Department.
5. **Easement.** Grantor hereby grants the City, its employees, independent contractors and designees, a nonexclusive easement for ingress and egress over, across and under the Development from time to time at the City's sole discretion to inspect, sample, and monitor components of the Stormwater Facilities and discharges therefrom. Grantor hereby grants to the City permission to undertake the actions described in Sections 6 and 7 of this Agreement. Grantor understands and agrees that this easement limits the ability of Grantor, its successors and assigns, including any Owner(s), from constructing any permanent buildings, structures, landscaping or other improvements that would interfere with the functioning of the Stormwater Facilities or the City's access to perform the inspection and maintenance required under this Agreement.
6. **Failure to Perform Agreement.** If the City, in its sole discretion, determines that the Owner(s) are not in compliance with the Agreement described in Sections 3 and 4, the City or its designee shall provide the non-complying Owner(s) written notice to perform the maintenance and/or repair work specified in the notice. Provided, however, no prior written notice shall be required in the case of an emergency, which shall be governed by Section 7. If such work is not performed to the City's satisfaction within seven (7) days after the date of such notice, or such other time as the City may, in its sole discretion, determine, the City, its employees, independent contractors and designees may exercise their rights under the Easement described in Section 5 of this Agreement to enter the Development to perform any and all work required bringing the Stormwater Facilities into compliance with this Agreement.
7. **Emergency.** If the City, in its sole discretion, determines that there exists or will likely exist an emergency on or about the Development with respect to the Stormwater Facilities, the City, its employees, independent contractors and designees may immediately exercise their rights under the Easement described in Section 5 of this Agreement to immediately enter the Development to perform any and all work required to bring the Stormwater Facilities into compliance with this Agreement, and in such case the City shall use reasonable efforts to notify the affected Owner(s) prior to entering the Development. Notwithstanding the above, the work performed may consist only of avoiding or mitigating the emergency and/or cleaning and/or repairing the Stormwater Facilities to their original condition and standards.
8. **City Under No Obligation.** The City, as well as its departments, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Agreement, including the right under Sections 6 and 7 of this Agreement, to perform the work required of the Owner(s), or to perform any other maintenance or repair of the stormwater facilities. In addition, neither the City, nor any of its departments, employees, independent contractors and/or designees shall have any liability to any Owner(s) in connection with the exercise or non-exercise of such rights, the maintenance or repair of the stormwater facilities, or the failure to perform the same.

9. **Grantor Obligations.** In addition to the agreement and easement described above, Grantor agrees to the following additional obligations:
  - a. Prior to sale of any portion of the Development, Grantor shall provide to the City's Public Works Department, a copy of the Operations and Maintenance Manual for the Stormwater Facilities, which shall include detailed diagrams and descriptions identifying the components and operations of the Stormwater Facilities.
  - b. Prior to final approval of the Development, this document shall be recorded in the deed records of Clackamas County.
  - c. Grantor shall notify the City's Public Works Director in writing of any change in ownership, and the new Owner(s) shall become the "**Grantor Designee**". The Grantor Designee, its successors and assigns shall be bound with respect to the matters described in this Agreement including Grantor's obligations.
  - d. Upon sale or transfer of the Development, or any portion thereof, Grantor shall inform the purchaser of the obligations required under this Agreement.
10. **Reimbursement.** If the City exercises its rights as described in Section 6 and Section 7 to perform compliance work and enters the Development pursuant to the Easement described in Section 5 of this Agreement, the Owner(s) shall reimburse the City for all its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice. If the Development is owned by more than one owner (i.e., multiple lot owners), for each property or Lot where the City exercises its rights as described in Section 6 and Section 7, the Owner(s) shall be severally liable for reimbursing the City for all its costs and expenses incurred in connection therewith within. If any of the Owner(s) fail to pay the invoiced amount within such period, such amount shall thereafter accrue interest at the statutory rate. Such amount, together with interest, shall be a lien on the Development (and each of the Lots within the Development) that may be foreclosed in accordance with ORS Chapter 88.
11. **Indemnification.** Owner(s) agrees to indemnify, defend (with legal counsel reasonably acceptable to the City), and hold harmless the City, its employees, independent contractors and designees harmless from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from failure of the Owner(s) to perform its obligations under this Agreements or the exercise of the City's rights under this Agreement.
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 the 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 Grantor under this Agreement shall run with the land and therefore shall bind the purchasers of property within the Development without the necessity of any separate agreement evidencing or confirming the assignment and the purchaser's assumption of the obligations. The obligations may not be otherwise assigned except that the obligations may be assigned, with the prior written consent of the City, to a homeowner's association that owns and maintains the common areas of the Development.
14. **Authority.** If Grantor is an entity, the individual executing this Agreement on behalf of Grantor represents and warrants to the City that he or she has the full power and authority to do so and that Grantor has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

IN WITNESS WHEREOF, the GRANTOR has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The person(s) whose name(s) is/are subscribed to the within instrument acknowledge that he/she/they executed the instrument in his/her/their legally 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.

[Signature Page(s) Follow]

**GRANTOR:** \_\_\_\_\_  
As shown on Page 1 (name of organization or individual property owner(s))

\_\_\_\_\_  
*Signature No. 1*

\_\_\_\_\_  
*Signer's printed name* \_\_\_\_\_ *Title (if applicable)*

\_\_\_\_\_  
*Signature No. 2*

\_\_\_\_\_  
*Signer's printed name* \_\_\_\_\_ *Title (if applicable)*

STATE OF OREGON )  
 )  
County of \_\_\_\_\_ )

This record was acknowledged before me on (month & day) \_\_\_\_\_, 20\_\_\_\_

by \_\_\_\_\_, as \_\_\_\_\_  
*Signer's printed name* *Title (write "N/A" if not applicable)*

of \_\_\_\_\_  
*Name of Corporation on whose behalf record is executed (write "N/A" if not applicable)*

*Stamp notary seal:*

WITNESS my hand and official seal.

\_\_\_\_\_  
*Signature of Notary Public*

My commission expires: \_\_\_\_\_

**Accepted on behalf of the City of Oregon City:**

\_\_\_\_\_  
By: Anthony J. Konkol III, City Manager

\_\_\_\_\_  
By: John M. Lewis, Public Works Director

\_\_\_\_\_  
Attest: Kattie Riggs, City Recorder

Insert exhibits on separate subsequent sheets.

Exhibit A is a legal description of the subject property provided by a professional land surveyor, stamped with their seal, and having a 1/8th-inch or larger font size (8.5-inch by 11-inch page).

Exhibit B is a site plan having a 1/8th-inch or larger font size (8.5-inch by 11-inch page is preferred).

Exhibit C is an operation and maintenance plan having a 1/8th-inch or larger font size (8.5-inch by 11-inch page).

**NOTE:**

**Please remit the required processing and recording fee with this document submittal.**

**Photostatic copies of reduced tax maps may not meet the above described map requirements – verify with the Clackamas County Recorder.**

**All pertinent documents must be approved and processed by the City of Oregon City prior to the recording of partition & subdivision plats by the Clackamas County Surveyors Office – allow ample time for the City to process this document.**