

NO CHANGE IN TAX STATEMENTS

AFTER RECORDING, RETURN TO:

Water Environment Services
150 Beaver Creek Rd. Suite 430
Oregon City, OR 97045

**DECLARATION AND MAINTENANCE AGREEMENT
FOR ON SITE STORMWATER FACILITIES**

THIS DECLARATION AND MAINTENANCE AGREEMENT FOR ON-SITE STORMWATER FACILITIES is made this _____ day of _____, 20____, by and between WATER ENVIRONMENT SERVICES (“WES”), an intergovernmental entity formed pursuant to ORS Chapter 190, and _____ (“Developer”).

RECITALS: On or about July 1, 1993, WES was delegated the responsibility and authority to implement a comprehensive and integrated stormwater program to provide for water quality and quantity control arising from property development. The Board of County Commissioners, acting as governing body of WES, made a policy decision that stormwater systems could be owned privately by the landowner(s), by an entity representing landowners or, under certain circumstances, by WES. Developer has asked WES to consider accepting the on-site stormwater improvements for the development as part of the public stormwater system which would require facilities and rate setting studies, amendments to the existing Rules and Regulations, program manuals, and standard agreements. WES is willing to accept these program modifications and the parties agree, in consideration of the Developer executing this Agreement, to provide for the ownership of the on-site stormwater facilities. This Agreement will be recorded and binding upon Developer and Developer's heirs, successors, and assigns, shall run with the land as to each successive owner of any lot in the development served by this facility (“Owners”), and shall bind each such Owner with respect to its period of ownership. Therefore, the parties agree as follows:

1. Property. Developer is the owner of the property referred to in City of Happy Valley Case File No. _____, known as _____. A full description of the property subject to this Declaration is set forth on Exhibit 1, attached hereto and incorporated by reference (hereinafter the "property" or "development").

2. Plat Approval. In consideration of the execution by Developer of this Agreement and performance of Developer's obligations hereunder and reference on the plat that the property is subject to the terms of this Agreement and WES's Rules and Regulations, WES agrees to approve the plat as submitted by the Developer.

3. Ownership. In consideration of Developer's execution of this Agreement and compliance with its terms, WES hereby acknowledges that it shall assume ownership of the stormwater facilities described on Exhibit 2, attached hereto and incorporated by reference (“stormwater facilities” or “facilities”).

Developer specifically agrees as follows:

- a. To obtain WES approval of facility plans for the property;
- b. To record this Agreement in the Clackamas County real property records so that it becomes a covenant running with the land and waiver of remonstrance to an assessment district, on-site maintenance fee, or other funding mechanism chosen by WES to collect fees or charges against the property for operation, maintenance, repair, and replacement of the stormwater facilities;
- c. To design and construct the stormwater facilities with approved materials and good workmanship according to WES standards at the Developer's sole cost and expense;
- d. To provide a statement of design and construction costs acceptable for use in WES's fixed asset accounting system;
- e. To allow WES to inspect, at its own expense, the facility following completion of construction; any repairs or maintenance work shall be performed by the Developer as determined by WES following inspection; any repair or maintenance shall be subject only to those WES standards which were in place at the time the permit for construction of the facility was issued; and
- f. To provide a maintenance bond in favor of WES and to follow the maintenance schedule established by WES set forth on Exhibit 2 for the first year following WES's Acceptance.

4. Maintenance Obligation. The Developer shall be obligated to operate, maintain, and repair the stormwater facilities for the first year. WES shall be obligated to operate, maintain, and repair the stormwater facilities after the first year and throughout its period of ownership of the facility. Operation and maintenance shall be performed according to WES's defined schedule that details tasks and time of performance, a copy of which is attached as Exhibit 2. The requirements of Exhibit 2 may be modified following WES inspection if as-built facilities differ from originally proposed facilities. Nothing in this Agreement shall obligate WES to any construction standards other than those which were in place at the time the permit for construction of the facility was issued.

5. Indemnity. Subject to the limitations established by the Oregon Tort Claims Act and the Oregon Constitution, each party hereto agrees to indemnify and hold harmless the other from any and all damages, claims, liability, and actions arising out of the negligence or activities of that party resulting in damage to or affecting the on-site stormwater facilities.

6. Guaranty. Developer and Developer's heirs, successors, and assigns hereby warrant the design and construction of the stormwater facilities as being free from defects for a period of one (1) year after the earlier of (i) final inspection and approval of the facilities by WES or (ii) the facilities first being put into operation, except for such work performed by WES on behalf of Developer as required in Section 4 above. Developer shall cause any defective work to be remedied for which WES gives written notice of warranty claim during such period.

7. Easements. Developer and Developer's heirs, successors and assigns hereby grants to WES an easement for it to effectively perform operation, maintenance, repair, and replacement of the stormwater facilities, as shown on the plat, if any.

8. Waiver of Remonstrance. Developer, and for Developer's heirs, successors, and assigns, hereby voluntarily consents to those charges and fees imposed by WES for operation, maintenance, repair, and replacement of the on-site surface water facilities, which will not exceed Three Dollars (\$3.00) per month or until further WES action. This will be in addition to the base fee under WES's Rules and Regulations, which is presently Seven Dollars and Sixty Seven Cents (\$7.67) per month per equivalent service unit as set by the Board of County Commissioners. Developer, and for Developer's heirs, successors, and assigns, further consents to the formation of an assessment district if WES determines that is the best method of charging for these services, and waives any right of remonstrance against the formation thereof. WES agrees to provide Developer with forty-five (45) days advance written notice of WES's desire to create such an assessment district. The undersigned hereby acknowledges that this Agreement is voluntarily executed for the purpose of inducing WES to accept ownership of the on-site facilities.

9. Breach/Termination. If either party breaches any term of this Agreement, then the non-defaulting party may upon ten (10) days prior written notice, give notice of such default. If such default is not cured within thirty (30) days following such notice, or if not reasonably susceptible to cure within such time, cure is not commenced within such time and thereafter diligently prosecuted to completion, then the non-defaulting party may declare this Agreement at an end or pursue any other remedy available including injunctive relief. In the event of a Developer default under this Agreement not cured within the foregoing period, then WES may record a document terminating this Agreement, and WES shall have no further obligation therefor.

10. Disputes. The parties agree that all disputes may be resolved through mediation, and if such mediation is not successful, then through arbitration by an arbitrator appointed by the Presiding Judge of the Circuit Court of Clackamas County, Oregon pursuant to ORS Chapter 36.

11. Notices. Any notice required hereunder shall be sufficient if deposited in the United States Mail, postage prepaid, addressed to the following:

| | |
|--------------------------------|-------------------|
| <u>WES:</u> | <u>Developer:</u> |
| Water Environment Services | .. |
| Attn: Director | .. |
| 150 Beaver Creek Rd. Suite 430 | .. |
| Oregon City, OR 97045 | |

12. Representation. The undersigned represent (s) to WES that he/she/they is/are the owner (s) of the property and have full authority to execute this document and bind all owners and the property.

13. Assignment. The Developer shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of WES, which may be granted or withheld in its sole and absolute discretion. WES may assign this Agreement at any time which will be considered effective upon assignment with no further approval required by Developer.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

WATER ENVIRONMENT SERVICES

By: _____
Director

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ [name] as _____ [title] on behalf of Water Environment Services.

Notary Public for Oregon
My Commission expires: _____

DEVELOPER

Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ [name] as _____ [title] on behalf of _____, Developer.

Notary Public for Oregon
My Commission expires: _____

INSERT EXHIBIT 1
[LEGAL DESCRIPTION OF PROPERTY]

Exhibit 2

This agreement applies to stormwater conveyance pipes and related appurtenances as follows:

- A) The developer will be responsible for all storm facilities constructed as part of this development plus any additional facilities that are specifically identified in this agreement. This responsibility shall continue until WES or some responsible agency takes them over.
- B) After WES takes over the storm system for ownership and maintenance, its responsibility will include only facilities that meet all of the following criteria:

Were constructed as part of this development.

and

Are outside of the road Right-of-Way.

and

Are contained in public easements, or tracts.

and

Are neither individual roof drain lines nor lines smaller than 8" in diameter.

These facilities shall be cleaned at the expense of the developer at least once immediately before acceptance by WES for maintenance. The sediment and debris shall be disposed of at an approved disposal site.

Any of the facilities listed below that are located on the site shall be cleaned as outlined below and any necessary repairs performed. Any facilities not mentioned below, will be maintained and/or repaired as needed.

Detention Pond ----- Remove sediment from bottom of pond. Clean associated pond outlet structures, and overflow weirs.

Detention Pipe ----- Clean all sediment & debris form detention pipe.

Sedimentation M.H. ----- Located at one or both ends of detention pipe. Clean out sump.

Storm Manhole ----- Clean sediment and debris from bottom of manhole.

Pollution Control M.H. - Clean out sump and baffles.

Control Manhole ----- Clean out sump. Inspect overflow riser & orifice for obstructions.

Private Storm Pipe ----- Remove sediment from pipe and 18" sumps of affected catch basins and junction boxes.

Storm sewer cleanout ---- For access purposes to clean and maintain storm sewer pipes.

Bio-Swale ----- Remove sediment & inspect any weirs, orifice, and

control structures for obstructions.

Drywell ----- Remove sediment from sump in the drywell, & the sediment from the sump of the associated sedimentation manhole.

Access Portal ----- For access purposes to clean and maintain a storm detention pipe.

Drainage Swale ----- Remove sediment, debris. Do not remove roots of vegetation.

Modified Trapped CB --- Clean sump. Inspect riser tee and orifice for obstructions.

Ditch Inlet Catch basin -- Clean sump and grate.

Pond Outlet Structure --- Clean sump. Inspect associated overflow riser, and orifice for obstructions.

Siltation Basin----- Remove sediment from bottom of basin. Clean associated overflow structure.