

CITY OF SUBLIMITY
Public Works Design Standards

Sample Developer-City Construction Agreement, Easement Forms, Etc.

Appendix D

Note: Forms in this appendix are sample model documents only, included for convenience of reference by developers, and may not include all forms. These sample documents are for reference only, and may not have the proper margins and spacing required by the County Clerk for recording.

The documents are subject to modification by the City to address project specific conditions *(as required by the Public Works Director, the City Engineer or the City Attorney)*.

Easement Procedure Summary *(use similar procedure for ROW dedications, etc.)*.

- For easements from a developer or property owner to the City *(or for private easements required by City standards)*, the easement legal description and to-scale exhibit map for the proposed easement shall be submitted to the City for review and approval *(unless the easement is created by the final plat, in which case the City easement form will simply reference the easement as noted on the plat)*. Exhibit maps not drawn and plotted to scale, or not containing the information required under PWDS 1.12.b *(or required to accurately and unambiguously identify the easement boundary and/or the subject properties)*, will be returned for revision.
 - Per ORS 93.600, use of a tax lot number and/or an address as the ONLY means to describe property is not legally adequate as a legal description, for use in a recorded document.
- In conjunction with submittal of the legal descriptions and exhibit maps, the developer shall provide the City with the following information *(if not included as part of the legal description or exhibit map)*:
 - Legal name of owner-of-record of property on which the easement is located, and deed reference number for property containing the easement.
 - For easements located on land not owned by the developer, the amount or type of consideration provided by the developer for the easement *(or indicate that consideration is non-monetary)*.
- Once approved, the City will attach the legal description and exhibit map to the appropriate City easement form *(modified by the City as applicable based on specific project conditions)*, and it will be returned to the developer for execution and recording at the County.
- A photocopy of recorded easements documents must be returned *(hard copy or email)* to the City after recording *(ie. to the City Planner, Public Works Director & City Engineer)*.
- All recording costs shall be borne by the Developer.

Note regarding City easements proposed to be created on/by a subdivision or partition plat, or in conjunction with a plat.

- Easements required in conjunction with a plat may be *(at the developer's option)* either (1) created on/by the final plat, or (2) created separately by recorded instrument and referenced on the final plat.
- ORS 92.050.9 prohibits City's from requiring information or notes on a plat which *"is or may be subject to administrative change or variance by the City"* unless authorized by the county surveyor. Under this requirement, terms and conditions of easements to the City typically cannot be included on plats. Therefore, the City requires that a separate easement document be recorded for any easement(s) to the City which is created by a plat, in order to formalize the terms and conditions of said easement(s).
- The developer should be aware that any utility easements to the City which are created on/by the plat *(other than street frontage PUEs)* will also require a separate easement document be recorded *(to formalize the terms of the City easement)*, with the easement to be recorded in conjunction with the final plat. In either case *(ie. whether created on/by a plat or created by separate instrument)*, a recorded easement document *(in a form acceptable to the City)* must be recorded for any easements to the City.

DEVELOPER-CITY CONSTRUCTION AGREEMENT

(for street, site and/or utility construction permit)

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the **City of Sublimity**, a municipal corporation, hereinafter called the “**City**” and _____, hereinafter called the “**Developer**”, effective as of the date listed on the City & Developer signature page.

WITNESSETH:

WHEREAS, the City Planning Commission has granted approval to the preliminary plan or plat for _____, with the understanding that the Developer agrees to comply with all planning conditions contained therein; and

WHEREAS, the City of Sublimity will grant approval for construction of public facilities consistent with the conditions contained within said City approval, and in accordance with the construction drawings prepared by the development team and approved by the City and other applicable agencies

NOW THEREFOR, the Developer and the City agree to the following conditions for completion of this development to wit:

1. The Developer agrees that all improvements shall be constructed by the development team in accordance with the construction drawings approved by the City, which construction drawings were approved by the City with conditions as outlined in the City approvals and letters dated as outlined below, and the said construction drawings and approval letters are incorporated into this agreement the same as if contained herein.
 - a. City Engineer: _____ Approved on _____, 20__
Approval Conditions (See approved construction drawings & approval letter)
 - b. City Public Works Department:
Approval Conditions (See approved construction drawings)
 - c. Fire Department:
Approval Conditions (See approved construction drawings)
2. The Developer agrees that he shall complete, or cause to be completed all required improvements and conditions of approval within 12 months of the date of this Agreement. If the said improvements and conditions of approval are not completed within this 12 month period, all approvals shall become null and void. Upon written request of the Developer, however, this Agreement may be extended for a period not to exceed an additional 6 months. The developer agrees to be responsible for the construction costs of all required public or private infrastructure improvements associated with the development (*both onsite and offsite*) as shown on the approved construction drawings. Applications for any reimbursements via SDC credits, oversizing reimbursements, reimbursement districts or other means shall be the sole responsibility of the developer, and the developer agrees that these are not to be relied upon by the developer until any such applications have been approved in writing by the applicable decision making authority.
3. The Developer agrees that all improvements shall be done in compliance with all applicable statutes, codes, ordinances and standards and conditions of approval, including but not limited to the City's Public Works Design Standards (PWDS), Specifications and Standards for Public Works Construction (most recent revisions), and the City subdivision and development ordinances. The Developer certifies that copies of the PWDS and PWCS have been purchased by the developer or his representative, and will be available for

reference by the contractor constructing the project (*the City PWCS consist of the Oregon Standard Specifications for Construction – OSSC (ODOT/APWA), edition as noted in the PWDS, subject to the material, equipment and other provisions specified in the PWDS*).

4. It is agreed that the Developer is making certain public utility improvements with the result that the City will provisionally accept said improvements as part of the City's public works facilities after the said Developer completes the improvements and procedures to the satisfaction of the Public Works Director. Final acceptance of the public works facilities shall not occur until the completion of the warranty period and satisfaction of the acceptance policies of the City. In no case shall the warranty period be less than 1 year from provisional acceptance of the public improvements by the City.
5. The Developer shall cause his engineer to provide all surveying services necessary to stake the project prior to and during construction and to prepare as-built drawings when the project is complete, all in conformance with City Standards.
6. The Developer shall cause his engineer(s) to provide all engineering, inspection and/or construction observation services as required by Section 1.13 of the City's Public Works Design Standards (PWDS) and as necessary to verify that the work is completed in substantial conformance with the approved drawings, and to prepare as-built drawings for submittal to the City prior to final approval or acceptance of the project by the City.
7. The Developer hereby designates the person named on Page 4 of this agreement as the Developer's engineer of record for this project as referenced above and in the PWDS.
8. The Developer shall, after satisfactorily completing conditions 1 through 6, provide the City a maintenance bond valued at a minimum of 40 percent of the estimated construction costs of the applicable portion of the permitted improvements (see PWDS G.14.d.2 & G.15.c&d). The warranty period for the applicable improvements shall not commence until acceptable as-builts and said maintenance bond is provided to the City. The period of the maintenance bond shall be for the full period of the warranty period which is not to be less than 1 (one) year from provisional acceptance by the City of the public sanitary sewer, storm drainage and/or water improvements, and not less than 2 (two) years from provisional acceptance by the City of the public street/sidewalk/street light/fire lane improvements.
9. (subdivision/partition) It is agreed between the City and the Developer that no building permits for any structures within the development will be issued until all required improvements have been constructed and all conditions of approval have been met by the Developer and accepted by the City, including submittal of acceptable as-built drawings and maintenance bond(s), as well as recordation of all required easements and other required documents.
10. If the Developer desires to record the final plat before all required improvements have been constructed and all conditions of approval have been met by the Developer and accepted by the City, the Developer shall provide a security guarantee (per PWDS G.10.d.4) satisfactory to the City Engineer that all improvements will be constructed in conformance with all City standards and ordinances and all conditions of approval will be satisfied.
11. (subdivision/partition) If the final plat is recorded before all required improvements have been constructed and all conditions of approval have been met by the Developer and accepted by the City, the City may require that this Developer-City Construction Agreement or a separate Public Improvements Guarantee Agreement be recorded in the deed records of Marion County by the Developer and referenced on the face of the final plat.
12. The Developer acknowledges that approval of the street/site/utility construction drawings by the City

IN WITNESS THEREOF, the person designated below certifies that he/she is the Developer's engineer-of record for this project and acknowledges that he/she has been retained to provide engineering services for this project as required by the PWDS and in accordance with this agreement, including providing periodic construction observation services as required to ensure that the project is completed in substantial conformance with the approved design, and preparing as-built drawings for submittal to the City prior to final approval or acceptance of the project by the City.

The engineer also certifies that if there is any change in his/her status as engineer-of-record, or if he/she is no longer able to provide engineering and related services (to verify construction to City standards) for any reason, he/she will notify the City in writing within 3 business days of said change in status.

The Engineer also certifies that he/she has copies of the PWDS and PWCS, which will be available for reference during the project (*the City PWCS consist of the Oregon Standard Specifications for Construction – OSSC (ODOT/APWA), edition as noted in the PWDS, subject to the material, equipment and other provisions specified in the PWDS*).

Dated this _____ day of _____, 20__

Name of Firm: _____

Address: _____

Signature: _____ Title: _____

Type/Print Name: _____
(Oregon Registered Professional Engineer) PE # _____

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20__, personally appeared before me, the above named person(s), _____, _____, _____, known to be to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

(Signature)
Notary Public for Oregon
My Commission Expires: _____

IN WITNESS THEREOF, the person designated below certifies that he/she is the authorized representative of the Developer's prime contractor *(for the portion of the project covered under the Public Works construction permit)*, and that said contractor has been retained to construct improvements in accordance with the construction drawings approved by the City *(including approval conditions as outlined in the City approvals and letters as outlined above)*, and will obtain all required permits for the work, and will ensure conformance with all requirements of such permits by the contractor and any subcontractors.

The contractor's representative certifies that if there is any change in the contractor's status on this project, or if the contractor is no longer able to provide construction and related services to City standards for any reason, he/she will notify the City in writing within 3 business days of said change in status.

The contractor's representative certifies that he/she has received a copy(s) of the stamped approved construction drawings, and will have at least one set of the stamped approved construction drawings *(including approval letters and attachments)* on site at all times for reference during construction *(in addition to any unstamped sets to be used by the construction crews)*. It is the Contractor's responsibility to ensure that any unstamped sets of drawings are current and include all revisions, and that copies of any required permits will also be on-site at all times construction is under way.

The contractor's representative certifies that he/she has copies of the Public Works Construction Standards (PWCS), which will be available for reference during the project *(the City PWCS consist of the Oregon Standard Specifications for Construction – OSSC (ODOT/APWA), edition as noted in the PWDS, subject to the material, equipment and other provisions specified in the PWDS and noted on the drawings)*.

The contractor's representative acknowledges that this agreement is considered to be a "written contract" for purposes of triggering "additional insured" coverage of the City and City Engineer under the Contractor's required insurance policy(s).

Dated this _____ day of _____, 20__

Name of Firm: _____

Address: _____

Oregon CCB License #: _____

Signature: _____ Title: _____

Type/Print Name: _____
(Contractor's authorized representative)

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by _____, as
_____ of _____.

(Notary Signature)
Notary Public – State of Oregon
My Commission Expires: _____

After recording, return to:

City of Sublimity
PO Box 146
Sublimity, OR 97385

City of Sublimity

**COVENANT FOR PERMANENT UTILITY EASEMENT
& ACCESS EASEMENT**

WHEREAS, the owner of record of the Property referenced below is _____, hereinafter called "Owner" and "Grantor", and said Owner (or subsequent owner of the lot or property as noted below) shall be subject to a covenant that creates an easement in perpetuity as outlined herein, which is recorded against the Property referenced below.

The undersigned Owner and Grantor does hereby grant to City of Sublimity, Marion County, Oregon, a municipal corporation, referred to herein as City, a permanent exclusive utility easement & a permanent non-exclusive maintenance access easement for the construction, reconstruction, operation and maintenance of City utilities, including water, sanitary sewer, storm drainage and other City utilities (and such other uses not deemed by the City to be incompatible therewith), and all necessary related facilities above, upon and under the following described premises, including the right to utilize routes on and across the Grantor's property as required to access said easement, and subject to the conditions relating to merger as summarized herein:

Sample wording

All that portion of the tract of land described in the attached Legal Description labeled "Exhibit A" and map labeled "Exhibit B" (incorporated herein by reference), which is located within the following described parcels:

- Lot __, Block __, _____ subdivision plat
- or- • Tract described in Volume __, page __, Marion County Deed Records.

-or-

A portion of Parcel __/Lot __ of Partition Plat 200 - __/____ (subdivision), Deed Records of Marion County, incorporated herein by reference, said easement shown as "Easement __" on said _____ plat.

-or-

Easement __ as shown on plat for _____, Marion County deed records, incorporated herein by reference.

- () Consideration for this covenant and grant consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.
- () Consideration for this covenant and grant consists of _____ dollars and other valuable consideration to Grantor paid by _____, as well as the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

This covenant and easements are in gross, for the benefit of the City and afford the City all rights to utilize said

easements in perpetuity.

The covenant and utility easement shall include the right of the City, its employees, agents, contractors, consultants and assigns to have ingress and egress above, upon and under the easement at all times for the purpose of excavating, constructing, installing, operating, repairing, maintaining and removing public or private utilities, including ingress and egress along any all-weather access lanes required by City standards. The City, its employees, agents, contractors, consultants and assigns, shall have the right to clear and keep clear all trees, undergrowth, and other obstructions that may interfere with access, normal operation or maintenance of said utilities, out of and away from the easement.

The Grantor agrees not to plant, build, construct, or create (nor permit others to plant, build, construct, or create) any fills, flora, buildings or other structures, including fences or parallel utilities, on the easement that may interfere with the use of the easement for the purposes set forth herein or with the normal operation, inspection, access to or maintenance of the utilities, including excavation for repairs or replacement if necessary. Prohibited structures shall include decks, footings or overhanging portions of structures which are located outside of the easement. The Grantor agrees not to construct cuts or fills within or on the easement area without express written approval by the City, since this will interfere with the use of the easement for the purposes set forth herein. Fills will make the utilities less accessible for inspection and/or maintenance, and cuts may result in inadequate cover over said utilities, and either will result in access points (manholes, inlets, valve, cleanout or meter boxes, etc.) no longer being at the proper grade. Any such approval by the City (which approval may be granted or withheld at the City's sole discretion), shall be contingent on the Grantor performing all work required by the City in order to mitigate impacts due to such cuts or fills, including reconstructing or resetting the utilities and appurtenances as directed by the City at the Grantor's expense. It is understood and agreed that City may remove (or require removal by the Grantor) any physical obstructions including buildings, overhangs, fences, trees, shrubbery or fill material, and abate any use of the easement if City finds that the physical obstruction or use will interfere with the City utility or City's ability to access, maintain or repair the City utility, and that such removal or abatement may be completed (including if removal by Grantor is required) without recompense to the Grantor(s). Access gates acceptable to the City shall be installed in fences which the City allows to be constructed across the easement. The City acknowledges that Grantor may use the easement area for permitted parking and/or access.

With the exception of appurtenances which must be at or above grade, all utilities will be placed underground.

Upon the final acceptance of the installed utility system and related improvements by the City (after any required warranty periods), the City shall be responsible for all further restorations of the premises if at any time the City causes the utilities to be repaired or maintained. The City, upon each and every occasion that the same be repaired, maintained or removed shall restore the premise of the Grantor, by removing all debris and leaving the ground surface in a neat and presentable condition. Grass and topsoil shall be restored as near as feasible to as good a condition as the same were prior to any repair or maintenance by the City.

Owner shall be responsible for maintenance and repair of any all-weather access lanes which are provided along (or to provide access to) City utilities, in a manner and condition to allow the City, its employees, agents, contractors, consultants and assigns to have vehicular access along said access lane at all times and during all seasons for the purpose of inspecting, maintaining or repairing City utilities.

Legal Effect. This covenant and easement is binding upon and inures to the benefit of all heirs, successors and

assigns of Grantor and City and runs with the land.

Doctrine of Merger. In the event of a finding that the easement rights granted under this covenant and easement agreement would otherwise be extinguished or be of no effect under the doctrine of merger (due to current or future common ownership of the dominant estate property and the servient estate property), the covenant and easement agreement entered into herein shall be considered as a “Covenant Creating an Springing Easement Effective upon Date of Sale”, which will result in the easement as set forth above taking effect at such time as the dominant or servient estates (or portions thereof containing or affected by the easement) are transferred, sold or conveyed in a manner so as to be under separate ownership (ie. such merger due to common ownership shall not result in the extinguishment of this covenant and easement agreement). This covenant shall automatically create the subject easement upon the recording of a deed conveying either the dominant estate property or the servient estate property (or portions thereof containing or affected by the easement) to another party, whether or not the easement is referenced in the deed. From and after the date that the easement thus becomes effective, the affected properties shall be subject to all terms and conditions contained herein.

Provision Applicable Law. This covenant and easement shall be governed by, and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of either party at any time to require performance of any provision of this covenant and easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this covenant and easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this covenant and easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this covenant and easement.

Amendment or Modification. No amendment or modification of this covenant and easement shall be valid unless in writing and signed by all parties hereto. City may vacate this easement in accordance with state law and local ordinance. This easement will not be considered abandoned until City Council has declared (in writing) the easement abandoned and no longer in use by City.

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The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20____.

(Printed Name of Grantors)

(Signature of Grantors)

STATE OF OREGON)
County of _____) ss.

This instrument was acknowledged before me on _____, 20____, by _____, as _____ of _____.

(Notary Signature)

Notary Public for Oregon

My Commission Expires: _____

APPROVED:

Sublimity City Recorder

Date _____

This instrument was acknowledged before me on _____, 20____, by _____ as City Recorder of the City of Sublimity, Oregon.

(Notary Signature)

Notary Public for Oregon

My Commission Expires: _____

City Engineer (Initial) (if modified)

After recording, return to:

City of Sublimity

PO Box 146

Sublimity, OR 97385

COVENANT FOR PERMANENT ACCESS EASEMENT AND FIRE LANE EASEMENT

WHEREAS, the owner of record of the Property referenced below is _____, hereinafter called "Owner" and "Grantor", and said Owner (or subsequent owner of the lot or property as noted below) shall be subject to a covenant that creates an easement in perpetuity as outlined herein, which is recorded against the Property referenced below.

The undersigned Owner and Grantor does hereby reserve, create and grant to City of Sublimity, Marion County, Oregon, a municipal corporation, referred to herein as City, a permanent access easement and fire lane easement for the construction, reconstruction, operation and maintenance of a fire lane (and such other uses not deemed by the City to be incompatible therewith), and all necessary related facilities above, upon and under the following described premises, and subject to the conditions relating to maintenance as summarized herein:

Sample wording

All that portion of the tract of land described in the attached Legal Description labeled "Exhibit A" and map labeled "Exhibit B" (incorporated herein by reference), which is located within the following described parcels:

- Lot __, Block __, _____ subdivision plat

-or- • Tract described in Volume __, page __, Marion County Deed Records.

-or-

A portion of Parcel __/Lot __ of Partition Plat 2004-__/_/____ (subdivision), Deed Records of Marion County, incorporated herein by reference, said easement shown as "Easement __" on said _____ plat.

-or-

Easement __ as shown on plat for _____, Marion County deed records, incorporated herein by reference.

- () Consideration for this covenant and grant consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.
- () Consideration for this covenant and grant consists of _____ dollars and other valuable consideration to Grantor paid by _____, as well as the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

This covenant and easement is in gross, for the benefit of the City and afford the City (and the Fire Department/Fire District serving the property) all rights to utilize said easements in perpetuity. Except for the uses specifically stated herein, this easement does not grant any rights to the public for access across the referenced property.

The fire lane improvements & any associated turnaround shall be signed and/or marked for no parking, and the fire lane shall include the right, privilege, and authority of City and/or the Fire Department/Fire District to remove or cause to have removed any and all obstructions, including vehicles, from the above described premises which may

interfere with the full use of the fire lane. No trees, permanent structures or improvements (including overhanging portions of structures which are located outside of the easement), including parallel fences shall be placed or constructed on the easement by the Grantor or the Grantor's heirs, assigns or successors in interest. Access gates acceptable to the City shall be installed in fences which the City allows to be constructed across the easement.

Whereas City standards require that the maintenance of the private fire lane improvements shall be the responsibility of the property Owner, this easement form shall also function as a maintenance agreement for the fire lane improvements within or accessing this easement. The Owner shall be responsible for the maintenance, repair, replacement and upkeep of all fire lane improvements, signs and/or markings at the Owner's sole expense. Maintenance & repair responsibilities shall include, but are not limited to, maintenance, repair or replacement of surfacing, fire lane signs, posts and/or markings that have been broken, damaged, removed or otherwise are not functioning as designed, etc.

The covenant and permanent access easement and fire lane easement shall include the right of City, its employees, agents, contractors, consultants and assigns (including the Fire Department or Fire District with jurisdiction) to have ingress and egress above, upon and under the easement at all times for the purpose of installing, inspecting, repairing, maintaining an emergency access and fire lane. In the event that the Owner fails to adequately repair or maintain the fire lane upon written notice from the City, the City, its employees, agents, contractors, consultants and assigns, shall have the right to clear and keep clear all obstructions, trees, undergrowth, and other obstructions that may interfere with access, normal operation or maintenance of said emergency access and fire lane, out of and away from the easement. Notwithstanding these rights, the City and assigns shall be under no obligation to perform maintenance or repairs on said easement.

If at any time the City or Fire Code Official determines, in the sole exercise of their discretion, that the fire lane improvements, signs and/or markings are not properly maintained and/or otherwise kept in good repair so as to provide for emergency vehicle access and prevent unauthorized parking, the City or Fire Code Official shall give reasonable notice to the Owner that the fire lane needs to be maintained and/or otherwise repaired. The notice shall provide a reasonable description of the problem with the fire lane improvements, and the notice shall provide a reasonable time to correct the problem. Should the responsible parties fail to correct the specified problem, the City may enter upon the property to so correct the specified problem. However, this agreement does not expressly impose on the City a duty to so inspect, clean, repair or maintain the fire lane improvements. The Owner agrees and covenants (for themselves and their respective successors and assigns) that they will reimburse the City for its costs and expenses incurred in the process of maintaining, and/or repairing the fire lane improvements within 30 days of written request by the City.

Legal Effect. This covenant and easement is binding upon and inures to the benefit of all heirs, successors and assigns of Grantor and City and runs with the land.

Doctrine of Merger. In the event of a finding that the easement rights granted under this covenant and easement agreement would otherwise be extinguished or be of no effect under the doctrine of merger (due to current or future common ownership of the dominant estate property and the servient estate property), the covenant and easement agreement entered into herein shall be considered as a "Covenant Creating an Springing Easement Effective upon Date of Sale", which will result in the easement as set forth above taking effect at such time as the dominant or servient estates (or portions thereof containing or affected by the easement) are transferred, sold or conveyed in a manner so as to be under separate ownership (ie. such merger due to common ownership shall not result in the

extinguishment of this covenant and easement agreement). This covenant shall automatically create the subject easement upon the recording of a deed conveying either the dominant estate property or the servient estate property (or portions thereof containing or affected by the easement) to another party, whether or not the easement is referenced in the deed. From and after the date that the easement thus becomes effective, the affected properties shall be subject to all terms and conditions contained herein.

Provision Applicable Law. This covenant and easement shall be governed by, and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of either party at any time to require performance of any provision of this covenant and easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this covenant and easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this covenant and easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this covenant and easement.

Amendment or Modification. No amendment or modification of this covenant and easement shall be valid unless in writing and signed by all parties hereto. City may vacate this easement in accordance with state law and local ordinance. This easement will not be considered abandoned until City Council (upon consultation with the Fire Department/Fire District) has declared (in writing) the easement abandoned and no longer in use and will not be needed in the future.

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The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this ____ day of _____, 20__.

(Printed Name of Grantors)

(Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by _____, as
_____ of _____.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

Sublimity City Manager

Date

This instrument was acknowledged before me on _____, 20__, by _____ as City Manager
of the City of Sublimity, Oregon.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

City Engineer (Initial) _____ (if modified)

After recording, return to:
City of Sublimity
PO Box 146
Sublimity, OR 97385

COVENANT FOR UTILITY EASEMENT & SIDEWALK EASEMENT

WHEREAS, the owner of record of the Property referenced below is _____, hereinafter called "Owner" and "Grantor", and said Owner (or subsequent owner of the lot or property as noted below) shall be subject to a covenant that creates an easement in perpetuity as outlined herein, which is recorded against the Property referenced below.

The undersigned Owner and Grantor does hereby reserve, create and grant to City of Sublimity, Marion County, Oregon, a municipal corporation, referred to herein as City, a permanent sidewalk easement (and such other uses not deemed by the City to be incompatible therewith) for the use of the City and the general public and a utility easement for the construction, reconstruction, operation and maintenance of public and franchise utilities, and all necessary related facilities for each easement above, upon and under the following described premises, and subject to the conditions relating to merger as summarized herein:

Sample wording

'The southerly __ feet (adjacent to the __ Street right-of-way) of the following described parcels:

- Lot __, Block __, _____ subdivision plat
- or- • Tract described in Volume __, page __, Yamhill County Deed Records.

Consideration for this covenant and grant consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

The covenant and easements are in gross, for the benefit of the general public and afford the public, by and through the City, all rights to utilize said easements in perpetuity. Grantor shall retain no special rights of use of the easement property beyond those held as member(s) of the general public.

The covenant and utility easement shall include the right of the City or its utility franchisees, its employees, agents, contractors, consultants and assigns to have ingress and egress above, upon and under the easement at all times for the purpose of excavating, constructing, installing, operating, repairing, maintaining and removing public and private utilities. The City or its utility franchisees, its employees, agents, contractors, consultants and assigns, shall have the right to clear and keep clear all trees, undergrowth, and other obstructions that may interfere with access, normal operation or maintenance of said utilities, out of and away from the easement. The Grantor agrees not to build, construct, or create, nor permit others to build, construct, or create any buildings or other structures on the easement that may interfere with the use of the easement for the purposes set forth herein or with the normal operation or maintenance of the utilities.

With the exception of utility pedestals, transformers, sidewalks, fire hydrants, street lights and similar appurtenances that must be above grade, all utilities shall be placed underground.

The City may shift the obligation for maintenance of the sidewalk or the right-of-way to the abutting property owner if the City Council deems that generally appropriate. In no event shall Grantor its assigns or successors-in-interest be responsible for the maintenance for those portions of the right-of-way not used as a sidewalk beyond that required of all property owners under City ordinances or codes.

The City or its utility franchisees, upon the initial installation and every occasion that the same be repaired, maintained or removed, shall restore the premise of the Grantor by removing all debris and leaving the ground surface in a neat and presentable condition. Grass and topsoil shall be restored as near as feasible to as good a condition as the same were prior to any repair or maintenance by the City or its utility franchisees.

Legal Effect. This covenant and easement is binding upon and inures to the benefit of all heirs, successors and assigns of Grantor and City and runs with the land.

Doctrine of Merger. In the event of a finding that the easement rights granted under this covenant and easement agreement would otherwise be extinguished or be of no effect under the doctrine of merger (due to current or future common ownership of the dominant estate property and the servient estate property), the covenant and easement agreement entered into herein shall be considered as a "Covenant Creating an Springing Easement Effective upon Date of Sale", which will result in the easement as set forth above taking effect at such time as the dominant or servient estates (or portions thereof containing or affected by the easement) are transferred, sold or conveyed in a manner so as to be under separate ownership (ie. such merger due to common ownership shall not result in the extinguishment of this covenant and easement agreement). This covenant shall automatically create the subject easement upon the recording of a deed conveying either the dominant estate property or the servient estate property (or portions thereof containing or affected by the easement) to another party, whether or not the easement is referenced in the deed. From and after the date that the easement thus becomes effective, the affected properties shall be subject to all terms and conditions contained herein.

Provision Applicable Law. This covenant and easement shall be governed by, and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of either party at any time to require performance of any provision of this covenant and easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this covenant and easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this covenant and easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this covenant and easement.

Amendment or Modification. No amendment or modification of this covenant and easement shall be valid unless in writing and signed by all parties hereto. City may vacate this easement in accordance with state law and local ordinance. This easement will not be considered abandoned until City Council has declared (in writing) the easement abandoned and no longer in use by City.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20__.

(Printed Name of Grantors)

(Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by _____, as
_____ of _____.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

Sublimity City Manager

Date

This instrument was acknowledged before me on _____, 20__, by _____ as City Manager
of the City of Sublimity, Oregon.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

City Engineer (Initial) _____ (if modified)

After recording, return to:
City of Sublimity
PO Box 146
Sublimity, OR 97385

PERMANENT ACCESS EASEMENT & STORMWATER DETENTION SYSTEM EASEMENT & DETENTION SYSTEM MAINTENANCE AGREEMENT

WHEREAS, the owner of record of the Property is _____, hereinafter called "Owner", and said Owner (or subsequent owner of the lot or property as noted below) shall be subject to the maintenance provisions of this agreement;

WHEREAS, _____, hereinafter called "Developer", applied for (with concurrence from the Owner) and was granted approval to develop land in accordance with the City of Sublimity Development Code under Sublimity Planning File No. _____, hereinafter called "Planning Action," by the City of Sublimity, Marion County, Oregon, a municipal corporation, hereinafter called "City," for property located as follows, hereinafter called "Property,":

Street Address: _____

Tax Lot: _____

Legal Description of property affected by Planning Action: Tract described in Deed Reference Number _____, Marion County Deed Records.

WHEREAS, the development & design standards require the Developer to construct a private storm drainage detention system, including detention storage basin, manholes & control structures, storm drain lines, control structures, (also including catch basins and storm inlet structures tributary to the detention basin which collect or otherwise minimize debris or pollutants reaching the detention basin and associated control structures), etc. (and such other uses not deemed by the City to be incompatible therewith), hereinafter called "Detention System";

WHEREAS, the City development & design standards require that the Detention System be located on private property, and be within a public utility and access easement to the City;

WHEREAS, the City development & design standards require that the maintenance of the private Detention System shall be the responsibility of the property Owner, and shall be assured through a recorded maintenance agreement;

NOW, THEREFORE, Owner and the City agree as follows:

SECTION 1. Ownership of Detention System. The Detention System is a private facility owned and maintained by the property Owner noted above. Where there are multiple parties with ownership interest the property on which the Detention System is sited, the provisions of this agreement shall apply to all owner's jointly and severally.

SECTION 2. Description of Easement Area.

2.1 All that portion of the tract of land described under "Easement ____" in the attached Legal Description labeled "Exhibit A" and map labeled "Exhibit B" (incorporated herein by reference), which is located on the property noted above.

SECTION 3. Grant of Easement. The undersigned Owner does hereby grant to City of Sublimity, in gross, a permanent and exclusive access & stormwater detention system easement for the access to the Detention System and all necessary related facilities above, upon and under the premises described under Section 2. The easement shall

include the right of the City, its employees, agents, contractors, consultants and assigns to have ingress and egress above, upon and under the easement at all times for the purpose of inspecting said Detention System and related facilities, or for performing any maintenance or repair work determined to be necessary by the City in order to protect public or private property, as outlined under Section 5 below. However, such right to inspect and perform maintenance or repairs does not obligate the City to perform such inspections, maintenance or repairs. Consideration for this grant of easement consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

SECTION 4. Maintenance Responsibilities. The Owner shall be responsible for the maintenance, repair, replacement and upkeep of the Detention System, including the irrigation system serving the Detention System, at the Owner's sole expense. It shall be the Owner's responsibility to demonstrate to the City upon request that the Detention System and related facilities are operating properly. Maintenance responsibilities shall include, but are not limited to, the following:

- 4.1 Inspection. All Detention System components, irrigation system, vegetation, and control structures (outlet structures, control manholes, orifices, as well as catch basins and storm inlet structures tributary to the detention basin, etc.) shall be inspected for proper operations and structural stability, at a minimum, quarterly for the first 2 years from the date of installation, 2 times per year thereafter, and within 48 hours after each major storm event.
- 4.2 Cleaning of Outlet Structures, Outlet Manhole and/or Control Structures. All sediment and/or debris shall be cleaned from the sump of any inlet or outlet structure, outlet manhole and/or flow control structures (as well as catch basins and storm inlet structures tributary to the detention basin) as required to maintain the design function and capacity of the system (water shall be pumped from said sumps as required to accomplish this cleaning). The initial cleaning & maintenance interval shall not exceed 6 months, unless the inspections above reveal a need for more frequent cleaning. After the end of the first year, if approved by Public Works based on the sumps in these structures having adequate capacity, the cleaning & maintenance interval can be increased as appropriate, but shall not be cleaned and maintained less frequently than once a year.
- 4.3 Maintenance & Repair. Owner shall be responsible for maintenance, repair or replacement of any component that has been broken, damaged, altered, removed or otherwise is not functioning as designed, including but not limited to inlet & outlet structures, manholes & control structures, storm drain lines, catch basins & storm inlets tributary to the Detention System, etc.
- 4.4 Irrigation, Mowing, Basin Planting & Maintenance Owner shall be responsible for: (a) installation and operation of a permanent underground automatic sprinkler system to maintain the grass and landscaping in a healthy state to maintain the stability of the detention basin slopes; (b) planting of grass to cover the entire interior slopes & base of the detention basin (use of bark dust or similar material on the top of slopes or on interior slopes of the basin is prohibited), (c) planting of grass or other approved landscaping on the exterior slopes of the detention basin. No trees or shrubs which will impair the structural integrity of the detention basin shall be planted or allowed to grow on the detention basin exterior; (d) any work required on the interior or exterior slopes to stabilize and/or replant (including appropriate erosion control measures) when soil is exposed or if erosion is observed; (e) periodic mowing of grass areas not less than once a month during the growing season, or more frequently if required to keep the maximum height less than 5-inches; (f) periodic inspection of the Detention System to ensure that outlet and control pipes are not clogged and remain clear; (g) removal of all debris from catchment and detention basin areas, including litter, leaves, branches and other objects which are unsightly or which may clog storm pipe lines; (h) removal of all non-grass vegetation from the top and interior slopes of the detention basin, and removal of nuisance and invasive vegetation (such as blackberries, ivy, etc) from the exterior slopes when discovered.
- 4.4 Spill Prevention. Measures shall be exercised when handling substances that contaminate stormwater. Releases of pollutants shall be corrected as soon as identified.
- 4.5 Pest Control. Insects & rodents shall not be harbored in the Detention System. Pest control measures shall be taken when insects/rodents are found to be present. If mosquito larvicide is used, it shall be applied in strict conformance with manufacturer's recommendation and any applicable State regulations.

Rodent holes in the ground located in and around the detention basin shall be filled by the Owner.

SECTION 5. Failure to Maintain.

- 5.1 If at any time the City determines, in the sole exercise of its discretion, that the Detention System and related facilities are not properly cleaned, maintained and/or otherwise kept in good repair, the City shall give reasonable notice to the Owner that the Detention System needs to be cleaned, maintained and/or otherwise repaired (in the case of an emergency, the City may enter upon the property without notice to perform emergency maintenance or repairs in cases where the City, at its sole discretion, determines that it is necessary to protect public or private property). The notice shall provide a reasonable description of the problem with the Detention System, and the notice shall provide a reasonable time to correct the problem. Should the responsible parties fail to correct the specified problem, the City may enter upon the property to so correct the specified problem. Notice shall be effective to the Owner by the City's deposit of the notice into the regular United States mail, postage pre-paid. However, this agreement does not expressly impose on the City a duty to so inspect, clean, repair or maintain the Detention System. Any surface restoration required due to access, inspection, maintenance or repairs thus performed by the City shall remain the responsibility of the Owner, whether or not the City chooses to complete such restoration in conjunction with the City's access, inspection, maintenance or repairs.
- 5.2 The Owner agrees and covenants (for themselves and their respective successors and assigns) that they will reimburse the City for its costs and expenses incurred in the process of cleaning, maintaining, and/or repairing the Detention System within 30 days of written request by the City. Such written request for payment shall be effective to the Owner by the City's deposit of the notice into the regular United States mail, postage pre-paid. The terms actual costs and expenses shall be liberally construed in favor of the City and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless whether the City uses its own personnel, tools, equipment and supplies, etc. to correct the matter. If the City initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the City shall be entitled to its damages and costs, including reasonable attorney's fees, regardless whether the City contracts with outside legal counsel or utilizes in-house legal counsel for the same. In the event that the costs and expenses are not timely paid, such costs and expenses shall be charged against the Property consistent with State and local regulations, and shall constitute a lien upon the Property until paid.

SECTION 6. Indemnification. The Owner agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless against any and all liability, claims, damages or other costs or expenses related to failure of the private Detention System, including any damage or injury incurred during inspection or maintenance of the Detention System, or due to the Owner's failure to maintain the Detention System, or failure to follow proper safety procedures during such inspection or maintenance, or failure to adequately control access to the private Detention System by the public.

SECTION 7. Recording of this agreement by Developer. Developer shall cause this agreement to be recorded in the deed records of Marion County, and a photocopy of the recorded document returned to the City.

SECTION 8. Other Provisions.

- 8.1 Legal Effect, Successors and Assigns. This easement and Agreement shall run with the land and be binding on all parties having or acquiring from the Owner, or the Owner's successors, any right, title, or interest in the property or any part thereof, as well as their title, or interest in the property or any part thereof, as well as their heirs, successors, and assigns. They shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of the City.
- 8.2 Provision Applicable Law. This easement and agreement shall be governed by, and construed in accordance with the laws of the State of Oregon.
- 8.3 Nonexclusivity of Rights & Remedies. The rights and remedies authorized to the City under this easement

and agreement are cumulative and are in addition to such other remedies as may be provided by law, equity, statute, ordinance or other source.

8.4 Waiver. Failure of either party at any time to require performance of any provision of this easement or agreement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this easement or agreement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

8.5 Severability. The determination that one or more provisions of this easement or agreement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this easement and agreement.

8.6 Modification. No amendment or modification of this easement and agreement shall be valid unless in writing and signed by all parties hereto. City may, at their sole discretion, vacate this easement in accordance with state law and local ordinance.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20__.

(Printed Name of Grantors)

(Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by _____, as
_____ of _____.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

Sublimity City Manager

Date

This instrument was acknowledged before me on _____, 20__, by _____ as City Manager
of the City of Sublimity, Oregon.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

City Engineer (Initial) _____ (if modified)

After recording, return to:
City of Sublimity
PO Box 146
Sublimity, OR 97385

PERMANENT ACCESS EASEMENT & GREASE INTERCEPTOR VAULT MAINTENANCE AGREEMENT

WHEREAS, the owner of record of the Property is _____, hereinafter called "Owner", and said Owner shall be subject to the maintenance provisions of this agreement;

WHEREAS, _____, hereinafter called "Developer", applied for (with concurrence from the Owner) and was granted approval to develop land in accordance with the City of Sublimity Development Code under Sublimity Planning File No. _____, hereinafter called "Planning Action," by the City of Sublimity, Marion County, Oregon, a municipal corporation, hereinafter called "City," for property located as follows, hereinafter called "Property,":

Street Address: _____

Tax Lot: _____

Legal Description: Tract described in Deed Reference Number _____, Marion County Deed Records.

WHEREAS, the development & design standards require the Developer to construct a private exterior two-compartment grease interceptor vault, hereinafter called "Grease Interceptor";

WHEREAS, the City design standards require that the maintenance of the Grease Interceptor shall be the responsibility of the property Owner, and shall be assured through a recorded maintenance agreement;

WHEREAS, the City design standards require that the Grease Interceptor be located on private property, and as such needs to be provided with a general access easement to the City;

NOW, THEREFORE, Owner and the City agree as follows:

SECTION 1. Ownership of Grease Interceptor. The Grease Interceptor is a private facility owned and maintained by the property Owner noted above. Where there are multiple parties with ownership interest the property on which the Grease Interceptor is sited, the provisions of this agreement shall apply to all owner's jointly and severally.

SECTION 2. Grant of Access Easement. The undersigned Owner does hereby grant to City of Sublimity, in gross, a permanent and non-exclusive right to access the Grease Interceptor location and all necessary related facilities above, upon and under the premises, along driveways, walkways or other areas that must be crossed between the public right-of-way and the Grease Interceptor location. The access rights shall include the right of the City, its employees, agents, contractors, consultants and assigns to have ingress and egress on the property at all times for the purpose of inspecting said Grease Interceptor, or for performing any maintenance or repair work determined to be necessary by the City in order to protect public or private property, as outlined under Section 4 below. However, such right to inspect and perform maintenance or repairs does not obligate the City to perform such inspections, maintenance or repairs. Consideration for this grant of easement consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

SECTION 3. Cleaning & Maintenance Responsibilities. The Owner shall be responsible for the cleaning, maintenance, repair, replacement and upkeep of the Grease Interceptor, at the Owner's sole expense. It shall be the Owner's responsibility to demonstrate to the City upon request that the system is operating properly. Maintenance responsibilities shall include, but are not limited to, the following:

3.1 Inspection. All Grease Interceptor components (vault segments, inlets, outlets, control orifices, etc.) shall

be inspected for proper operations and structural stability, at a minimum, annually.

- 3.2 Cleaning of Grease Interceptor. All grease and/or debris shall be removed from both compartments of the Grease Interceptor vault, as well as cleaned from inlet or outlet piping as required, to maintain the design function and capacity of the system (water shall be pumped from vault as required to accomplish this cleaning). The initial cleaning & maintenance interval shall not exceed every 3 months while the building is in use (including at the end of each school year), unless the inspections above reveal a need for more frequent cleaning. After the end of the first year, if approved by Public Works based on the vault having adequate capacity, the cleaning & maintenance interval can be increased as appropriate, but shall not be cleaned and maintained less frequently than twice a year (including at the end of each school year). If subsequent inspections reveal capacity problems, the Owner shall revert to the more frequent cleaning intervals.
- 3.3 Maintenance & Repair. Owner shall be responsible for maintenance, repair or replacement of any component that has been broken, damaged, altered, removed or otherwise is not functioning as designed, including but not limited to the vault, divider walls, inlet & outlet structures, access lids, etc. All access lids and risers shall be extended to finish grade and maintained in a watertight condition, and exclude any infiltration of groundwater or inflow of surface water.
- 3.4 Spill Prevention. Measures shall be exercised when cleaning the Grease Interceptor to avoid spillage of pumped grease, solids or liquids. Any spillage shall be completely cleaned up prior to the cleaning or maintenance crew leaving the site.
- 3.5 Prohibited Substances. No chemical, enzyme or bacterial agent shall be added to the Grease Interceptor which will cause the release of grease into the sewer system. Unless otherwise specifically required in writing by the Plumbing Official, no garbage grinders, food pulpers or toilets shall discharge to the Grease Interceptor.
- 3.4 Records and Reporting. The Owner shall maintain a record (in the form of a log book) of steps taken to abide by the obligation under this section. The log book shall be available for inspection by the City upon request. The log book shall catalog the action taken (cleaning, inspection and/or maintenance), who took it, date and time it was done, how it was done, and any problems encountered or follow-up action recommended. Copies of all receipts for cleaning and pumping of the Grease Interceptor must be retained by the Owner with the log book. The Owner shall send a letter to the City prior to December 15 of each year that provides proof of cleaning, inspection and maintenance, including copies of pumping contracts and/or receipts of work conducted by a hired service.

SECTION 4. Failure to Maintain.

- 4.1 If at any time the City determines, in the sole exercise of its discretion, that the Grease Interceptor is not properly cleaned, maintained and/or otherwise kept in good repair, the City shall give reasonable notice to the Owner that the Grease Interceptor needs to be cleaned, maintained and/or otherwise repaired (in the case of an emergency, the City may enter upon the property without notice to perform emergency maintenance or repairs in cases where the City, at its sole discretion, determines that it is necessary to protect public or private property). The notice shall provide a reasonable description of the problem with the Grease Interceptor, and the notice shall provide a reasonable time to correct the problem. Should the responsible parties fail to correct the specified problem, the City may enter upon the property to so correct the specified problem. Notice shall be effective to the Owner by the City's deposit of the notice into the regular United States mail, postage pre-paid, or delivery to the Owner's local place of business. However, this agreement does not expressly impose on the City a duty to so inspect, clean, repair or maintain the Grease Interceptor. Any surface restoration required due to access, inspection, maintenance or repairs thus performed by the City shall remain the responsibility of the Owner, whether or not the City chooses to complete such restoration in conjunction with the City's access, inspection, maintenance or repairs.
- 4.2 The Owner agrees and covenants (for themselves and their respective successors and assigns) that they will reimburse the City for its costs and expenses incurred in the process of cleaning, maintaining, and/or repairing the Grease Interceptor (including cleaning of downstream sewer system resulting from failure of the Grease Interceptor) within 30 days of written request by the City. Such written request for payment shall be effective to the Owner by the City's deposit of the notice into the regular United States mail, postage pre-

paid, or delivery to the Owner's local place of business. The terms actual costs and expenses shall be liberally construed in favor of the City and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless whether the City uses its own personnel, tools, equipment and supplies, etc. to correct the matter. If the City initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the City shall be entitled to its damages and costs, including reasonable attorney's fees, regardless whether the City contracts with outside legal counsel or utilizes in-house legal counsel for the same. In the event that the costs and expenses are not timely paid, such costs and expenses shall be charged against the Property consistent with State and local regulations, and shall constitute a lien upon the Property until paid.

SECTION 5. Indemnification. The Owner agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless against any and all liability, claims, damages or other costs or expenses related to failure of the Grease Interceptor, including any damage or injury incurred during inspection or maintenance of the Grease Interceptor, or due to the Owner's failure to maintain the Grease Interceptor, or failure to follow proper safety procedures during such inspection or maintenance.

SECTION 6. Recording of this agreement by Developer. Developer shall cause this agreement to be recorded in the deed records of Marion County, and a photocopy of the recorded document returned to the City.

SECTION 7. Other Provisions.

- 7.1 Legal Effect, Successors and Assigns. This Agreement shall run with the land and be binding on all parties having or acquiring from the Owner, or the Owner's successors, any right, title, or interest in the property or any part thereof, as well as their title, or interest in the property or any part thereof, as well as their heirs, successors, and assigns. They shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of the City.
- 7.2 Provision Applicable Law. This easement shall be governed by, and construed in accordance with the laws of the State of Oregon.
- 7.3 Nonexclusivity of Rights & Remedies. The rights and remedies authorized to the City under this agreement are cumulative and are in addition to such other remedies as may be provided by law, equity, statute, ordinance or other source.
- 7.4 Waiver. Failure of either party at any time to require performance of any provision of this easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- 7.5 Severability. The determination that one or more provisions of this easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this easement.
- 7.6 Modification. No amendment or modification of this easement shall be valid unless in writing and signed by all parties hereto. City may, at their sole discretion, vacate this easement in accordance with state law and local ordinance.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20__.

(Printed Name of Grantors)

(Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by _____, as
_____ of _____.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

Sublimity City Manager

Date

This instrument was acknowledged before me on _____, 20__, by _____ as City Manager
of the City of Sublimity, Oregon.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

City Engineer (Initial) _____ *(if modified)*

This memo is considered to be sent to all land developers within the City of Sublimity, at or near completion of their project.

Memo

Date:

To:

_____ address

cc:

*Sublimity land use file (_____)
Sublimity Building Official
Sublimity Public Works*

From:

Sublimity City Engineer

Subject:

Lot Grading & Drainage During and After Construction of Structures

This memo is to reiterate grading requirements relative to the layout and building of homes and structures on this property, and the need to take extra care in the grading during and after building to facilitate good drainage on the lots and the surrounding area.

As you are no doubt aware, good grading around a house and on a lot can make all of the difference in how homes are effected by the rain (and resultant drainage concerns) in Oregon. It is important to ensure that the houses and structures are not set too low on the lots. To avoid drainage problems, it is important that the homes are kept high enough so that you can grade around the structures and the lots in a manner that will direct the surface runoff away from the homes and off the lots into the streets and drainage systems without ponding. This is particularly critical where there is drainage coming onto any lot from adjacent property, either within or outside the development. In addition, it is critical that existing drainage patterns from adjacent properties must be maintained when grading on lots, around houses or other structures so as to not pond water or block drainage.

The City design standards for new developments include provisions intended to ensure that the streets are low enough so that the lots can drain to the streets, or that drainage stubs are provided at an elevation that will provide a good positive outlet. However, in spite of this, poor grading around homes during house construction and landscaping is a common cause of problems. Depending on building location, landscaping and lot grading, in some cases it may be necessary to construct perimeter drains to collect water and direct it to another point. It may also be necessary to install area drains to prevent water from collecting and being trapped in areas around homes, particularly in the rear of the homes or on the high side of the lots. It is a good idea to ensure that the landscape contractor considers these elements when the lots are finished following house construction.

In the event that you sell all or any portion of this property to another builder or developer, please make sure that they are aware of the need for proper grading and drainage on the lots. Please be aware that under City standards, the builder is responsible for ensuring that these drainage issues are addressed, and the builder is also responsible for installing and maintaining erosion control measures during and after building construction.

