

After recording, return to:
City of Wilsonville
Attn: Legal Department
29799 SW Town Center Loop East
Wilsonville OR 97070

STORMWATER MAINTENANCE AGREEMENT

THIS STORMWATER MAINTENANCE AGREEMENT (“Agreement”) is effective as of the _____ day of _____ 2023 (“Effective Date”), between _____ a(n) _____ (“Owner”), and the **City of Wilsonville**, a municipal corporation of the State of Oregon (the “City”).

RECITALS

A. Owner is the holder of title to certain real property located in the City of Wilsonville, Clackamas County, Oregon, **Tracts _____ and _____**, Plat of _____, legally described on Plat No. _____, recorded on _____, as Document No. _____, in the Deed Records of Clackamas County, Oregon (the “Property”).

B. The City approved certain development plans for the Property submitted by Owner or Owner’s predecessor in interest. The Property contains onsite stormwater facilities, as described in the City-approved plans. Stormwater facilities located on Owner’s Property, together with other stormwater facilities that have been or may hereafter be constructed on the Property, or adjacent or nearby properties, are collectively referred to as the “Stormwater Facilities,” and are more particularly described in **Section 2** of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the granting of land use approvals as good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and incorporating all of the above Recitals as if fully set forth below, the City and Owner agree as follows:

1. **Owner’s Covenant to Maintain and Repair.** At Owner’s sole expense, Owner or Owner’s qualified contractor, will at all times maintain the Stormwater Facilities in good working order, condition, and repair, clear of all debris, and in compliance with all applicable federal, state, and local laws, rules, regulations, and guidelines, including those adopted by the Oregon Department of Environmental Quality (DEQ), the Federal Environmental Protection Agency (EPA), and City Ordinances and Public Works Standards. Owner will meet all provisions of the Stormwater Operations and Maintenance Plan, attached hereto as **Exhibit A**.

2. **Stormwater Facilities.** Stormwater Facilities subject to this Agreement, include, but are not limited to, the following: stormwater pipes, stormwater manholes, catch basins, clean-outs, applicable access roads and/or safety fences, vegetated stormwater facilities, monitoring manholes, flow control devices, energy dissipaters, headwalls, ditch inlets, pervious pavement, and proprietary systems. A detailed drawing showing the location and all components of the Stormwater Facilities is attached hereto as **Exhibit B**.

3. **Owner's Failure to Perform.** If the City determines that Owner is not in compliance with any provision of this Agreement, except in case of emergency, the City will give Owner written notice of the violation. If Owner does not respond to the City's notice by either: a) curing the violation(s) noted by the City within thirty (30) days of such notice, or b) providing information satisfactory to the City that cure of the violation is being diligently undertaken in good faith, then the City may perform the necessary work to cure the violation and charge Owner for the cost of performance. If the City determines, in its sole discretion, that there exists or will likely exist an emergency with respect to the Stormwater Facilities, the City, its employees, contractors, and designees may perform any and all work required to bring the Stormwater Facilities into compliance with the requirements of this Agreement, with as much notice as is reasonable, if any. The City's right to access the Property is set forth in the Public Stormwater Access Easement being recorded concurrently herewith.

4. **Restoration.** Any party who installs, maintains, or repairs the Stormwater Facilities will be responsible to promptly restore the Property to good, clean condition and repair so that the Owner and its successors and/or assigns shall have the free and unobstructed use thereof, subject to rights of the City herein provided. Except when the City is required to maintain, clean, repair, and/or replace components of the Stormwater Facilities due to Owner's failure to comply with the terms of this Stormwater Maintenance Agreement, Owner shall have a direct right of action against any benefited party who fails to abide by the terms of this Agreement.

5. **Limitation of Duty.** Owner, for itself and its successors and assigns, understands and agrees that the City does not have any obligation to exercise Owner's duties under **Section 1** of this Agreement or to perform any other monitoring, inspection, maintenance, repair, or replacement of the Stormwater Facilities. The City shall not have any responsibility to Owner or any of Owner's successors or assigns in connection with the exercise or non-exercise of such rights or duties, the inspection, monitoring, maintenance, repair, or replacement of the Stormwater Facilities, or the failure to perform any of the foregoing. The rights granted to the City by this Agreement are to be exercised at the sole discretion of the City and impose absolutely no obligation on the City for monitoring, inspection, maintenance, repair, or replacement of the Stormwater Facilities.

6. **Reimbursement.** If the City performs any of the obligations of Owner with respect to the Stormwater Facilities, Owner shall reimburse the City for all of its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice from the City. If Owner fails to pay the invoiced amount within such period, such amount shall thereafter accrue interest at a per annum rate equal to the prime rate of the City's then current commercial bank, plus five percent (5%).

7. **Indemnification.** Owner agrees to indemnify, defend, and hold the City, its employees, officers, councilors, contractors, and designees harmless from and against any liability, losses, costs, fines, penalties, and expenses, including reasonable attorney fees, from sanctions, claims, or suits arising from Owner's failure to perform its obligations under this Agreement, or arising under the exercise of the City's use of the Agreement. This duty to indemnify and hold the City harmless does not extend to any claims or suits arising from or caused by the City's gross negligence or willful misconduct.

8. **Run with the Land.** The rights and obligations contained herein shall run with the land, burden the land, be for the benefit of the public, and shall be binding upon Owner and Owner's respective heirs, successors, and assigns including, without limitation, subsequent owners of the land.

9. **Legal Action/Attorney Fees.** If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

10. **Jurisdiction.** This Agreement will be governed in accordance with the laws of the State of Oregon. Venue for any suit, action, or proceeding of any nature to enforce any term of this Agreement will be in Clackamas County Circuit Court.

11. **Assignment.** Notwithstanding that this Agreement will transfer to any future owner of the Property, this Agreement may not be assigned to a party who is not an owner unless and until the City consents, in writing, to such assignment and Owner's assignee provides a signed Maintenance Plan, approved by the City.

12. **Notice.** Whenever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by nationally recognized overnight express delivery service, or by U.S. registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth below, or at such other addresses as are specified by written notice in accordance herewith:

If to Owner:

Attn: _____

Email: _____

If to the City: City of Wilsonville
Attn: Development Engineering Manager
29799 SW Town Center Loop East
Wilsonville OR 97070
Email: apepper@ci.wilsonville.or.us

Any notice so transmitted shall be deemed effective three (3) days after deposit in the United States Mail or one (1) business day after deposit with the overnight courier, or on the date that it is personally delivered to the Party to whom the notice is addressed.

Because of the importance that notice reach the designated person, if the person designated above to receive notice should change, then a party wishing to make a change to the above must notify the other party, in writing, by certified mail, return receipt requested, and by email.

13. **Time of the Essence.** Time is of the essence in performance of this Agreement.

14. **Nonwaiver.** Any failure to enforce any provision of this Agreement will not be deemed a waiver of the right to enforce that provision or any other provision of this Agreement.

15. **Severability.** If any provision of this Agreement is found to be void or unenforceable, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

16. **Modification.** This Agreement may not be modified unless signed by both parties and the modification is recorded. A change in designee shall not be considered a modification of this Agreement.

17. **Entire Agreement.** This Agreement, including all documents attached to this Agreement and all documents incorporated by reference herein, represents the entire agreement with respect to the use and operation of the Agreement and Stormwater Facilities.

[Signatures begin on following page]

CITY OF WILSONVILLE

By: _____
Bryan Cosgrove
As Its: City Manager

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me this ____ day of _____, 2023,
by Bryan Cosgrove, as City Manager of the City of Wilsonville.

Notary Public – State of Oregon

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney

APPROVED AS TO LEGAL DESCRIPTION:

Amy Pepper, P.E., Development Engineering Manager

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