

CITY OF DAYTON
Public Works Design Standards

Standard 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. The sample documents in this appendix are for general reference only, do not reference any particular property, and may not have the proper margins and spacing required by the County Clerk for recording.

The sample documents are subject to modification by the City to address project specific conditions *(as may be required by the Public Works Director, the City Engineer and/or the City Attorney)*, as well as to reference and to attach the required easement legal description and exhibit map.

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 property)*, will be returned for revision.
 - Per ORS 93.600, use of a tax lot number **as the ONLY means** to describe property is not legally adequate as a legal description of property for use in a recorded document *(similarly, use of an address only is insufficient as the sole legal description of property)*.
- 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 to reference the property in question and type of easement)*, and it will be returned to the developer for execution and recording at the County.
- A photocopy of recorded easement 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.

After recording, return to:

Dayton City Recorder
PO Box 339
Dayton, OR 97114-0339

Sample Form for Reference Only.

Actual form for signature & recording is to be prepared by the City, with modifications and attachments as applicable.

PUBLIC UTILITY EASEMENT

_____ and _____ (collectively "Grantor"), for good and fair consideration the receipt of which is hereby acknowledged, does hereby grant unto the City of Dayton, ("Grantee" & "City"), a permanent exclusive public utility easement and non-exclusive inspection & maintenance access easement ("Easement") over, across, and through the real property described in EXHIBIT A and depicted in EXHIBIT B (the "Easement Area") for constructing, reconstructing, installing, and maintaining water, sanitary sewer, storm drainage and other associated utilities not deemed incompatible by the Grantee, including the right to utilize routes on and across the Grantor's property as required to access said easement. The easement is in gross for the benefit of the Grantee/City in perpetuity, and subject to the conditions relating to unity of ownership and doctrine of merger and/or vacation/extinguishment as summarized herein.

The Easement Area referenced above is located within the following described properties:

- Lot __, Block __, _____ subdivision plat, Yamhill County Deed Records
 - Tract described in Deed Reference Number _____, Yamhill County Deed Records.
- (collectively the Grantor's Property)

The parties further agree as follows:

1. The true and actual consideration paid for this easement is \$ _____.

The true and actual consideration for this easement consists wholly of value other than money, including the mutual promises and conditions contained herein.

2. Grantor Rights & Obligations. The Grantor agrees not to plant, build, construct or create (or permit others to plant, build, construct, or create) any cuts, fills, flora, buildings or other structures including fences or parallel overhead or underground utilities (ie. anything other than perpendicular crossings) in the Easement Area that may interfere with Grantee's use of the Easement Area as set forth herein. Prohibited structures in the Easement Area include but are not limited to decks, footings, or overhanging portions of structures which are located outside of the Easement Area. Grantor may use the Easement Area for permitted parking and/or access so long as that use does not interfere with Grantee's use of the Easement Area.

The Grantor agrees not to construct trenches, cuts or fills within or on the easement area without express written approval by the Grantee, since this will interfere with the use of the easement for the purposes set forth herein. Any such approval by the Grantee shall be contingent on the Grantor performing all work required to mitigate impacts due to such trenches, cuts or fills, including reconstructing or resetting the utilities and appurtenances as directed by the Grantee, backfilling any trenches to City standards, all at the Grantor's sole expense.

3. Construction, Repair, Inspection and Maintenance. Grantee shall be responsible for the construction, installation, maintenance, and repair of any Grantee utilities in the Easement Area, except to the extent the need for such maintenance and repair is caused by the gross negligence or willful misconduct of Grantor. The Grantee may remove any obstructions in the Easement Area that interfere with Grantee's use of the Easement Area without any payment to the Grantor including but not limited to trees,

undergrowth, buildings, overhangs, fences, shrubbery, cut areas or fill material. Grantee agrees that with the exception of appurtenances which must be at or above grade, all of the utilities will be placed underground. The Grantee shall return the Easement Area to a good condition (i.e. repair/replace soil disturbance; removal of construction debris, rocks/gravel and other materials; etc.) with all damage resulting from or arising out of said use to be repaired by Grantee. The Easement shall include the right of the Grantee, its employees, agents, contractors, consultants and assigns to have ingress and egress to and along the Easement Area for the purposes summarized herein, as well as the right to utilize routes on or across the Grantor's Property as required for inspection or maintenance access, including ingress and egress along any all-weather access lanes required by City standards. In the event Grantor installs cross fences in the Easement Area, Grantor agrees to construct access gates allowing Grantee to access the Easement Area, and locks on gates so approved shall comply with City requirements.

Grantor 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.

4. Compliance with Laws. In utilizing the Easement Area, both parties agree to comply with any applicable State, local or Federal laws or regulations for public health or safety, construction or environmental protection.
5. Title Warranty. Grantor represents and warrants that to the best of its knowledge, Grantor owns the entire fee simple interest in the Property, which is free to the best of Grantor's knowledge from all encumbrances (except for easements, conditions and restrictions of record), and has the full power and lawful authority to grant this Easement.
6. Entire Agreement. This Easement is the final and complete agreement between the parties concerning the rights granted herein, and supersedes all prior understandings with respect to it. Except as otherwise set forth in this Easement, this Easement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by all parties to the Easement. The Grantee may vacate or terminate this easement in accordance with state law and local ordinance, subject to the condition that the easement will not be considered abandoned until City Council has declared (in writing) the easement abandoned and no longer in use by (or of benefit to) the City.
7. Further Cooperation. Each of the parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this Easement.
8. Covenants Running With the Land. The Easement shall run with the land as to all property benefited and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this Easement shall bind, burden, and benefit Grantor and Grantee, and their respective successors, assigns, lessees, mortgagees, and beneficiaries under any deeds of trust.
9. Unity of Ownership/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 due to unity of ownership (at the time of easement creation) or 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. it is

agreed that such extinguishment or 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. It is agreed that from and after the date that the easement thus becomes effective, the affected properties shall be subject to all terms and conditions contained herein.

As used herein, the term "shall" is considered a mandatory obligation, and synonymous with the phrase "has a duty to" when referring to a capable actor, and with the word "must" when referring to a requirement regarding an inanimate object or a status.

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IN WITNESS WHEREOF, the parties have executed this easement, effective this ____ day of _____, 20__.

GRANTOR:

GRANTEE:

(Signature)

(Signature)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF OREGON
County of Yamhill

This instrument was acknowledged before me on _____ 20__, by _____ as _____ of the City of Dayton, an Oregon municipal corporation (Grantee).

Notary Public for Oregon

STATE OF OREGON
County of Yamhill

Note: Name of Owner/Grantor filled in
below must match name on page 1.

This instrument was acknowledged before me on _____ 20__, by _____ as _____ of _____, a(n) _____ (owner/grantor).

Notary Public for Oregon

ACCEPTED on behalf of City of Dayton, Oregon
this ____ day of _____, 20__.

City Engineer (Initial) _____ (if modified)

After recording, return to:

City of Dayton
PO Box 339
Dayton, OR 97114-0339

Sample Form for Reference Only.

Actual form for signature & recording is to be prepared by the City, with modifications and attachments as applicable.

**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 Dayton, Yamhill 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 an 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 __, Yamhill County Deed Records.

-or-

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

-or-

Easement __ as shown on plat for _____, Yamhill 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 (regardless of whether or not fire lane signs or markings exist at the time of such obstruction or vehicle removal). 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, and locks on gates so approved shall comply with City and/or Fire Department/Fire District requirements.

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 (jointly and severally with the owners of other property served by the fire lane to the extent noted in maintenance agreements) shall be responsible in perpetuity 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 and marked so as to provide for emergency vehicle access and prevent unauthorized parking or storage, the City or Fire Code Official shall give reasonable written notice to the Owner that the fire lane needs to be maintained and/or otherwise repaired and/or cleared of vehicles or obstructions. The notice shall provide a reasonable description of the problem with the fire lane improvements or use, 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. Vehicles parked on (or obstructions stored on) the fire lane may be removed by the City or by the Fire Department/Fire District 24 hours after providing such notice (obstructions or vehicles may be removed immediately if the situation is deemed to be an emergency, as determined at the sole discretion of the City and/or Fire Department/Fire District), and all parties hereby agree that the City or the Fire Department/Fire District shall not be responsible for any damage incurred during such removal by the City or the Fire Department/Fire District. However, this agreement does not expressly impose on the City a duty to so inspect, clean, repair or maintain the fire lane improvements, or to clear obstructions or vehicles. The Owner agrees and covenants (for themselves and their respective successors and assigns and tenants) that they will reimburse the City for its costs and expenses incurred in the process of maintaining, and/or repairing the fire lane improvements (or removing vehicles or obstructions) within 30 days of written request by the City for reimbursement. Failure to reimburse the City may result in a lien being

placed on the property.

Legal Effect. This covenant and easement is binding upon and inures to the benefit of all heirs, successors and assigns of Grantor (and any existing or future tenants of Grantor) and City and runs with the land.

Unity of Ownership/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 due to unity of ownership (at the time of easement creation) or 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. it is agreed that such extinguishment or 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. It is agreed that 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 affect 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.

As used herein, the term “shall” is considered a mandatory obligation, and synonymous with the phrase “has a duty to” when referring to a capable actor, and with the word “must” when referring to a requirement regarding an inanimate object or a status.

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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 _____)

Note: Name of Owner/Grantor filled in
below must match name on page 1.

This instrument was acknowledged before me on _____, 20__, by _____, as
_____ of _____ (owner/grantor).

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

APPROVED:

Dayton City Manager

Date

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

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

City Engineer (Initial) _____ (if modified)

After recording, return to:
City of Dayton
PO Box 339
Dayton, OR 97114-0339

Sample Form for Reference Only.

Actual form for signature & recording is to be prepared by the City, with modifications and attachments as applicable.

COVENANT FOR PERMANENT 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 Dayton, Yamhill County, Oregon, a municipal corporation, referred to herein as City, a permanent sidewalk easement for the construction, reconstruction, operation and maintenance of sidewalks and all necessary related facilities (and such other uses not deemed by the City to be incompatible therewith) above, upon or under the following described premises, and subject to the conditions relating to unity of ownership and doctrine of 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.
- () 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.

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 sidewalk 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 the sidewalk and associated improvements.

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 sidewalk, 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 flora, buildings or other structures, including fences, 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 sidewalk and associated improvements.

Except as expressly set forth herein, the Grantor reserves the right to utilize the Easement Property for any purpose

which does not interfere with the use of the easement by City for the purposes set forth herein.

Grantor agrees that he shall comply with all obligations in regard to construction, maintenance, repair and other responsibilities in regard to the sidewalk as if the sidewalk were constructed and existing in the public right-of-way adjacent to the property and in accordance with City ordinances.

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.

Unity of Ownership/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 due to unity of ownership (at the time of easement creation) or 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. it is agreed that such extinguishment or 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. It is agreed that 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 affect 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.

As used herein, the term “shall” is considered a mandatory obligation, and synonymous with the phrase “has a duty to” when referring to a capable actor, and with the word “must” when referring to a requirement regarding an inanimate object or a status.

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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 _____)

Note: Name of Owner/Grantor filled in
below must match name on page 1.

This instrument was acknowledged before me on _____, 20____, by _____, as
_____ of _____ (owner/grantor).

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

APPROVED:

Dayton City Manager

Date

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

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

City Engineer (Initial) _____

After recording, return to:
City of Dayton
PO Box 339
Dayton, OR 97114-0339

Sample Form for Reference Only.

Actual form for signature & recording is to be prepared by the City, with modifications and attachments as applicable.

**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 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 Dayton Development Code under Dayton Planning File No. _____, hereinafter called "Planning Action," by the City of Dayton, Yamhill County, Oregon, a municipal corporation, hereinafter called "City," for property located as follows, hereinafter called "Property,":

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

Supplemental description of property location:

Street Address: _____

Tax Lot: _____

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 Dayton, 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 Director 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 the following as applicable: (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 Yamhill County, and a photocopy of the recorded document returned to the City.

SECTION 8. Other Provisions.

- 8.1 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.
- 8.2 Provision Applicable Law. This 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 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 Agreement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this 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 Agreement is invalid, void or illegal or unenforceable shall not affect or invalidate the remainder of this Agreement.
- 8.6 Modification. No amendment or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. City may, at their sole discretion, vacate this Agreement in accordance with state law and local ordinance.
- 8.7 As used herein, the term "shall" is considered a mandatory obligation, and synonymous with the phrase "has a duty to" when referring to a capable actor, and with the word "must" when referring to a requirement regarding an inanimate object or a status.

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 _____)

Note: Name of Owner/Grantor filled in
below must match name on page 1.

This instrument was acknowledged before me on _____, 20__, by _____, as
_____ of _____ (owner/grantor).

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

APPROVED:

Dayton City Manager

Date

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

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

City Engineer (Initial) _____ (if modified)

After recording, return to:
City of Dayton
PO Box 339
Dayton, OR 97114-0339

Sample Form for Reference Only.

Actual form for signature & recording is to be prepared by the City, with modifications and attachments as applicable.

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 Dayton Development Code under Dayton Planning File No. _____, hereinafter called "Planning Action," by the City of Dayton, Yamhill County, Oregon, a municipal corporation, hereinafter called "City," for property located as follows, hereinafter called "Property,":

Legal Description of property: Tract described in Deed Reference Number _____, Yamhill County Deed Records.

Supplemental description of property location:

Street Address: _____

Tax Lot: _____

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 Dayton, 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 the Public Works Director 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 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 Yamhill 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 Agreement 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 Agreement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this Agreement 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 Agreement is invalid, void or illegal or unenforceable shall not affect or invalidate the remainder of this Agreement.
- 7.6 Modification. No amendment or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. City may, at their sole discretion, vacate this Agreement in accordance with state law and local ordinance.
- 7.7 As used herein, the term "shall" is considered a mandatory obligation, and synonymous with the phrase "has a duty to" when referring to a capable actor, and with the word "must" when referring to a requirement regarding an inanimate object or a status.

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 _____)

Note: Name of Owner/Grantor filled in
below must match name on page 1.

This instrument was acknowledged before me on _____, 20__, by _____, as
_____ of _____ (owner/grantor).

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

APPROVED:

Dayton City Manager

Date

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

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

City Engineer (Initial) _____ (if modified)

This memo is considered to be sent to all developers within the City of Dayton, at or near completion of their project, in order to notify developers/builders of their responsibility to comply with these City drainage standards.

Memo

Date:

To: _____ (all developers, property owners, homebuilders, etc.)
address

cc: Dayton land use file (_____)
Dayton Building Official
Dayton Public Works

From: Dayton City Engineer

Subject: Lot Grading & Drainage During and After Construction of Structures on Property

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/structure and on a lot can make all of the difference in how homes/structures are affected 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 performing grading or fills 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 or swales 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, or where adjacent properties historically drain onto the lot (*"historically drain onto the lot" refers to conditions existing at the time a Public Works or building permit is issued for construction on the property*). It is critical to ensure that the sitework and/or 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 (*LUDC 7.2.304.03.A & 7.2.306.01.C, DMC 5.7, etc.*).