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**-EXAMPLE (See MC 10.729(4))-  
OPERATION & MAINTENANCE AGREEMENT  
FOR  
STORMWATER FLOW CONTROL FACILITY**

This Operation and Maintenance Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, their heirs, successors, or assigns, hereinafter referred to as “Declarant(s)”.

The upkeep and maintenance of stormwater facilities is essential to their ability to function as they were designed. All property owners are expected to conduct business in a manner that promotes environmental protection. This Agreement contains specific provisions with respect to facility maintenance.

Whereas, the Declarant(s) are the owner of land (hereinafter the “Real Property”) located in Jackson County, Oregon described in Exhibit ‘A’, attached:

Whereas, the Declarant(s) has received approval for such development by the City of Medford, and in conformance with Section 10.486 of the City of Medford Municipal Code shall construct a stormwater facility (hereinafter referred to as “SF”) and shall provide for private maintenance by individual property owners, and a mechanism for enforcement of such maintenance obligation.

Now, therefore, Declarant(s) hereby declares that the SF serving (Name of Subdivision) benefits Lots (\_\_\_\_) through (\_\_\_\_) therein, and that the benefit of said SF requires that it be maintained in accordance with the Operation and Maintenance Plan, which has been approved by the City for this development, and is attached hereto as Exhibit ‘B’, and that the maintenance thereof should be borne equally by the respective property owners, and that the SF shall be subject to the following conditions which shall run with the Real Property and shall be binding upon all parties having any right, title, or interest in the Real Property or any part thereof, including their heirs, personal representatives, successors, grantees, and assigns and which shall inure to the benefit of each owner of such properties:

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1. Implement the Operations and Maintenance Plan (O & M Plan) approved by the City of Medford for this project.
2. Maintain a record in the form of a log book of the maintenance or repairs performed on the SF. The log book shall catalog the action taken, who took it, when it was done, any problems encountered, and follow-up actions recommended.
3. This Agreement shall remain in full force and effect unless canceled or modified with the unanimous and written consent of the City and the property owner/owners or their designees.
4. The owners of Lots (\_\_\_\_) through (\_\_\_\_) shall be responsible for the maintenance of the SF, and shall perform periodic inspections, at least once every 12 months, and perform needed maintenance and repairs.
5. Provide the City of Medford access to the SF for the purpose of performing inspections.
6. It is intended that the City of Medford be a beneficiary to this Agreement. In the event that the SF is not inspected, maintained or repaired as required by the O & M Plan, the City of Medford may order and have performed any such inspection and any required maintenance or repairs, provided, however, that the City of Medford shall provide at least thirty (30) days notice of its intention to do so. If the City of Medford completes any maintenance, or repair of the SF, the owners of Lots (\_\_\_\_) through (\_\_\_\_) shall each pay an equal pro-rata share of any costs incurred by the City of Medford in connection therewith. If the owner of any obligated property fails to pay its share, the City of Medford shall have enforcement rights as set forth in Sections 9 and 10 of this Maintenance Agreement.
7. The costs of inspection, maintenance and/or repair shall be borne equally by the owners of Lots (\_\_\_\_) through (\_\_\_\_). The respective contributions shall be made by the owners of Lots (\_\_\_\_) through (\_\_\_\_) within ten (10) days of presentment of a bill for such inspection, maintenance, and repair.
8. Following inspection, maintenance, and/or repair by the property owners and in the event that one or more owners fails to contribute his or her share of costs for such inspection, maintenance, or repair, the remaining owners shall contribute a proportionate share of such delinquent contribution(s).

9. The owner(s) who contribute a proportionate share of expenses for SF inspection, maintenance, or repair for the owner(s) who fail to contribute his or her share of costs, or the City of Medford acting through Section 6, above, shall have a valid lien on the property owned by the owner(s) who failed to contribute his or her proportionate share of such expenses in the amount of such contribution. The lien shall be a continuing charge on said property (ies) and such lien shall also include all interest, cost of collection and reasonable attorney fees in collecting and enforcing it. Such assessment, together with costs and fees, shall be the personal obligation of the individual owner of such property as of the date when the charge for inspection, maintenance, or repair expenses fell due. The charge shall bear interest at the rate of ten (10) percent per annum from the date such expense comes due. Any owner who shall have paid his share of any SF expense, or the City of Medford may bring an action in law or equity to foreclose the lien against the non-paying owner's property or an action at law against the non-paying owner personally.
10. The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed or like encumbrance upon any of the Declarant(s) properties. Sale or transfer of any of the Declarant's properties, shall not affect the assessment lien; PROVIDED, HOWEVER, the sale or transfer of any such property pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such property from liability for any assessments thereafter becoming due or from the lien thereof.
11. In the event suit, or action, or appeal thereon, is brought to enforce the terms of this Declaration including an action to collect a delinquent contribution, the losing party or parties shall pay the prevailing party or parties' reasonable attorney fees as determined by the Court.

IN WITNESS WHEREOF, this Declaration has been executed on the date first above written by the Declarant.

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\_\_\_\_\_  
\_\_\_\_\_

STATE OF OREGON )

) ss.

COUNTY OF JACKSON )

\_\_\_\_\_, 2002

On this day personally appeared before me:

\_\_\_\_\_, to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein stated.

Given under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Before me:

\_\_\_\_\_  
Notary Public for Oregon

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