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D-OD Cnt=2 Stn=54 COUNTER2  
\$35.00 \$5.00 \$16.00 \$22.00 \$10.00

After recording return to:

*Jaime Reed*  
CITY RECORDER  
PO BOX 3040  
Oregon City, OR 97045

City Permit No(s): CP 15-01, DP 15-01, NR 15-05, US 15-06

Tax Map/Lot: 2-2E-29-2900

Drainage Area Served: 499,067sf

Grantor: The Cove Apartments, LLC

## MAINTENANCE COVENANT AND ACCESS EASEMENT FOR PRIVATELY OWNED STORMWATER MANAGEMENT FACILITIES

THIS MAINTENANCE COVENANT AND ACCESS EASEMENT ("Agreement") is made this 6<sup>th</sup> day of September, 2017, between The Cove Apartments, LLC, a Delaware Limited Liability Company ("Developer"), and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the "City").

### RECITALS

A. Developer is the owner and developer of certain real property located in the City of Oregon City, Clackamas County, Oregon, legally described on Exhibit A attached hereto and commonly known as The Cove Apartments, 1937 Main Street, OREGON CITY, OR 97045 (the "Development").

B. Developer has constructed or will construct stormwater management facilities (Stormwater Facilities) at the Development as further described below and depicted in **Exhibit B** Site Plan:

Contech Storm Filter Vaults; quantity two; Operations and Maintenance per Contech guidelines.
Contech Storm Filter Catch Basin; quantity one; Operations and Maintenance per Contech guidelines.
Vegetated Swale; quantity one; Operations and Maintenance per City Stormwater Design Standards guidelines.

C. The City has approved construction plans submitted by Developer for the Development, including Stormwater Facilities as described above.

D. To protect future lot owners in the Development, as well as owners of neighboring property, the City requires Developer to enter into this Agreement as a condition to the City's approval of construction plans and building permit(s) for the Development.

E. The Stormwater Facilities enable development of property while mitigating the impacts of additional surface water and pollutants associated with stormwater runoff prior to discharge from the property to the public stormwater system. The consideration for this Agreement is

connection to the City's public stormwater system.

F. The Stormwater Facilities are designed by a registered professional engineer to accommodate anticipated volume of runoff and to detain and treat runoff in accordance with City's Stormwater and Grading Design Standards and its amendments.

G. Failure to inspect and maintain the Stormwater Facilities can result in an unacceptable impact to the public stormwater system.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

1. **Covenant to Maintain and Repair.** Developer shall, at its sole expense, itself or through qualified independent contractors, at all times maintain the Stormwater Facilities in good working order, condition and repair, clear of all debris, and in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the City and including the City's Stormwater and Grading Design Standards). The stormwater facility Operation and Maintenance plan requires operations and maintenance per the manufacturers guidelines and the City's Stormwater Design Standards as applicable.

2. **Covenant to Inspect.** Developer shall perform, at a minimum, annual inspections of all Stormwater Facilities covered by this agreement, per the City's and manufacturer's applicable operations and maintenance guidelines for the Stormwater Facilities. The annual inspection required by this Agreement shall identify work necessary to repair or maintain facilities in good working order. Developer shall provide Oregon City Public Works Department with annual maintenance inspection forms, including identification of the corrective actions the Developer has taken in response to the annual inspection. If needed, inspection forms can be obtained from the Oregon City Public Works Department.

3. **Easement.** Developer hereby grants the City, its employees, independent contractors and designees, a nonexclusive easement for ingress and egress over, across and under the Development from time to time at the City's sole discretion to inspect, sample, and monitor components of the Stormwater Facilities and discharges therefrom. Developer hereby grants to the City permission to undertake the actions described in Sections 4 and 5 of this Agreement. Developer understands and agrees that this easement limits the ability of Developer, its successors and assigns from constructing any permanent buildings, structures, landscaping or other improvements that would interfere with the functioning of the Stormwater Facilities or the City's access to perform the inspection and maintenance required under this Agreement.

4. **Failure to Perform Covenant.** If the City, in its sole discretion, determines that Developer is not in compliance with the covenant described in Sections 1 and 2, except in the case of an emergency, the City or its designee shall provide the Developer written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the City's satisfaction within seven (7) days after the date of such notice, or such other time as the City may, in its sole discretion, determine, the City, its employees, independent contractors and



designees may exercise their rights under the Easement described in Section 3 of this Agreement to enter the Development to perform any and all work required bringing the Stormwater Facilities into compliance with this Agreement.

**5. Emergency.** If the City, in its sole discretion, determines that there exists or will likely exist an emergency on or about the Development with respect to the Stormwater Facilities, the City, its employees, independent contractors and designees may immediately exercise their rights under the Easement described in Section 3 of this Agreement to immediately enter the Development to perform any and all work required to bring the Stormwater Facilities into compliance with this Agreement, and in such case the City shall use reasonable efforts to notify the Developer, property owner, or tenant prior to entering the Development. Notwithstanding the above, the work performed may consist only of avoiding or mitigating the emergency and/or cleaning and/or repairing the Stormwater Facilities to their original condition and standards.

**6. City Under No Obligation.** Developer, for itself and its successors and assigns (including all owners of lots in the Development), agrees that the City, as well as its departments, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Agreement, including the right under Sections 4 and 5 of this Agreement to perform the work required of the Developer, or to perform any other maintenance or repair of the stormwater facilities. Developer also agrees that none of the City, as well as its departments, employees, independent contractors and/or designees shall have any liability to Developer or any of Developer's successors or assigns (including owners of lots in the Development) in connection with the exercise or nonexercise of such rights, the maintenance or repair of the stormwater facilities, or the failure to perform the same.

**7. Developer Obligations.** In addition to the covenants and easement described above, Developer agrees to the following additional obligations.

a. Prior to sale of any portion of the Development, Developer shall provide to the City's Public Works Department, a copy of the Operations and Maintenance Manual for the Stormwater Facilities, which shall include detailed diagrams and descriptions identifying the components and operations of the Stormwater Facilities.

b. Prior to final approval of the Development, this document shall be recorded in the deed records of Clackamas County.

c. Developer shall notify the City's Public Works Director in writing of the person responsible for compliance with Developer's obligations under this covenant ("Developer Designee"), and of any change in the Developer Designee. Developer expressly agrees that the Developer Designee shall have the authority to bind Developer, its successors and assigns with respect to the matters described in this Agreement.

d. Upon sale or transfer of the Development, or any portion thereof, the Developer shall inform the purchaser of the obligations required under this Agreement.

**8. Reimbursement.** If the City exercises its rights as described in Section 4 and Section 5 to

perform compliance work and enters the Development pursuant to the Easement described in Section 3 of this Agreement, Developer shall reimburse the City for all of its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice. If Developer fails to pay the invoiced amount within such period, such amount shall thereafter accrue interest at the statutory rate. Such amount, together with interest, shall be a lien on the Development (and each of the lots contained therein) which may be foreclosed in accordance with ORS Chapter 88. If the Development is owned by more than one person (i.e., multiple lot owners), each such owner shall be jointly and severally liable for payment of the amounts provided for in Section 3.

**9. Indemnification.** Developer agrees to indemnify, defend (with legal counsel reasonably acceptable to the City), and hold harmless the City, its employees, independent contractors and designees harmless from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from Developer's failure to perform its obligations under this Agreements or the exercise of the City's rights under this Agreement.

**10. Run with the Land.** The parties' rights and obligations contained herein shall run with the land and shall be binding upon Developer and its successors and assigns (including, without limitation, subsequent owners of lots in the Development and any homeowner's association owning common areas in the Development). Those rights and obligations shall inure to the benefit of the City, as well as its successors and assigns.

**11. Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in the appeal therefrom. The term "action" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

**12. Assignment.** The obligations of Developer (and subsequent owners of lots in the Development) under this Agreement may not be assigned except (a) in connection with the sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations), and (b) with the prior written consent of the City, to a homeowner's association that owns and maintains the common areas of the Development.

**13. Authority.** If Developer is an entity, the individual executing this Agreement on behalf of Developer represents and warrants to the City that he or she has the full power and authority to do so and that Developer has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

IN WITNESS WHEREOF, Developer and the City have executed this instrument on the date first written above.

[Signature Page Follows]



**DEVELOPER:**

THE COVE APARTMENTS, LLC, a Delaware limited liability company

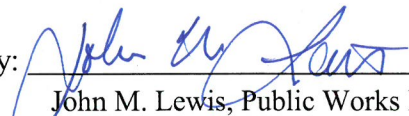
By: The Cove JV, LLC, a Delaware limited liability company, its sole Member

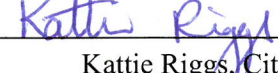
By: Grand Cove, LLC, a Delaware limited Liability company, its Managing Member

By:   
Spencer Welton, Manager

**CITY OF OREGON CITY**

By:   
Anthony J. Konkol III, City Manager

By:   
John M. Lewis, Public Works Director

By:   
Kattie Riggs, City Recorder

**DEVELOPER**

STATE OF WASHINGTON )  
 ) ss.  
County of King )

On the 3<sup>rd</sup> of August, 20 17, before me, personally appeared Spencer Welton, the above named who is the \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her voluntary act and deed.



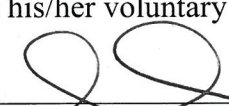
  
Notary Public for Washington  
My Commission Expires 07-28-20

EXHIBIT A – LEGAL DESCRIPTION

LOT 2, CLACKAMETTE COVE, RECORDED AS BOOK 141, PAGE 001,  
CLACKAMAS COUNTY PLAT RECORDS, IN THE CITY OF OREGON CITY,  
COUNTY OF CLACKAMAS AND STATE OF OREGON. TOGETHER WITH THAT  
PORTION OF VACATED MAIN STREET AS DESCRIBED IN VACATION  
ORDINANCE NO. 10-1004 AND RECORDED JUNE 14, 2010, AS RECORDER'S  
FEE NO. 2010-035495, CLACKAMAS COUNTY DEED RECORDS.

# EXHIBIT B

SOUTH CONTECH STORMFILTER VAULT;  
OPERATION AND MAINTENANCE PER  
CONTECH GUIDELINES AS APPLICABLE

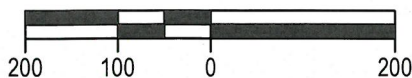
CONTECH STORMFILTER CATCH BASIN;  
OPERATIONS AND MAINTENANCE PER  
CONTECH GUIDELINES AS APPLICABLE

NORTH CONTECH STORMFILTER VAULT;  
OPERATION AND MAINTENANCE PER  
CONTECH GUIDELINES AS APPLICABLE

VEGETATED SWALE;  
OPERATIONS AND MAINTENANCE  
PER CITY STORMWATER DESIGN  
STANDARDS GUIDELINES AS  
APPLICABLE



SCALE: 1"=200'



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COVE GARDEN APARTMENTS  
ON-SITE WATER QUALITY FACILITIES

PROJECT 14069.03

DATE 08/04/2017

EXHIBIT B