

After recording return to:
Portland Permitting & Development
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201

**TOWNHOUSE COVENANT FOR FUTURE EASEMENT
AND MAINTENANCE AGREEMENT EFFECTIVE UPON DATE OF SALE**

RECITALS

A. [INSERT OWNER'S LEGAL NAME, INCLUDING TYPE OF BUSINESS ENTITY, IF APPLICABLE] ("Declarant"), is the record owner of the parcels described in Section 1 below.

B. Declarant has submitted an application to the City of Portland for a permit to build _____ [# of units]-unit **attached** townhouse structures with common use building elements and utilities on individual tax lots at _____ [PROPERTY ADDRESS AND LOT NUMBERS].

C. The parcels described in Section 1 below have shared or common use building elements and utilities that cross property lines, including, but not limited to: fire walls, foundations, structural sheathing, connectors, porches and porch coverings, decks, eaves and overhangs, roofing, flashing, rain gutters and downspouts, exterior finish materials, rain drains, footing drains, stormwater facilities, driveways, electrical lines, television cable and telephone lines that are shared or used in common or necessary for lateral stability or that cross common property lines (hereinafter "Elements"), as further specified on the plat attached hereto as "Exhibit B." Such Elements will need to be maintained by the current and future owners of the parcels.

D. The parcels described in Section 1 below contain the following common areas and on-site improvements: _____ [INSERT A DESCRIPTION OF EXISTING COMMON AREAS AND ON-SITE IMPROVEMENTS.] The surface drainage provisions for the parcels include: _____ DESCRIBE SURFACE DRAINAGE PROVISIONS].

E. Declarant desires to clarify responsibilities regarding the easement and maintenance of the Elements and to enter into an agreement to create a "Covenant for Future Easement and Maintenance Agreement Effective Upon Date of Sale" (hereinafter "Agreement") for the Elements and to establish rules and regulations to govern the use, maintenance and repair of the Elements and the easement.

F. Declarant agrees to record this Agreement for each parcel, to provide record notice of the terms of this Agreement, and to bind subsequent transferees of the parcels described in Section 1 below to the terms of this Agreement. Declarant acknowledges that Declarant

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must provide Portland Permitting & Development with a copy of the recorded Agreement prior to issuance of the building permit described in Section B above.

G. In consideration of the promises in this Agreement, NOW, THEREFORE, the Declarant agrees as follows:

AGREEMENT

1. LEGAL DESCRIPTIONS. The properties that are subject to this Agreement are as follows:

Parcel #1: _____ [insert physical address and map and tax lot number], as more fully described in Exhibit "A" attached hereto.

Parcel #2: _____ [insert physical address and map and tax lot number], as more fully described in Exhibit "A" attached hereto.

[ADD ANY OTHER PARCELS IN THE PROJECT]

2. CREATION OF COVENANT FOR EASEMENT AND MAINTENANCE AGREEMENT FOR SHARED OR COMMON ELEMENTS. Declarant conveys the rights under this Agreement for the Elements to the successors in interest to Parcels _____ as depicted in the plat set forth in attached Exhibit "B" and as described as follows:

[INSERT LEGAL DESCRIPTION OF EASEMENT]

Declarant, Declarant's successors and assigns, covenant that Parcel(s) _____ described in Section 1 above shall be subject to the terms of this Agreement and shall immediately be burdened with an easement for the Elements benefiting Parcel(s) _____ at such time as Declarant or subsequent owners or assigns transfer ownership of the parcels described in Section 1 above such that the parcels are no longer under common ownership. [NOTE: THIS LANGUAGE MAY CHANGE, DEPENDING ON HOW PARCELS ARE BURDENED.]

3. TERM AND BINDING EFFECT. This Agreement shall be effective as of the date of the signature(s) below and shall continue in perpetuity. All terms and provisions herein are intended to and shall be covenants running with the land and shall be binding on Declarant, Declarant's heirs, executors, administrators, successors, and assigns and all current and future owners of the parcels described in Section 1 above and all persons claiming title, possession, or ownership of or to such properties.

4. PURPOSE OF THE AGREEMENT. The purpose of this Agreement is to provide for a covenant that will create an easement in perpetuity for the Elements on Parcel(s) _____ benefiting Parcel(s) _____ as described in Section 1 above and to address the repair, upkeep, and replacement of and access to the Elements.

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5. RELATIONSHIP TO OTHER EASEMENTS OR ENCUMBRANCES. The future easement is granted subject to all prior easements or encumbrances of record.

6. ACCEPTANCE OF TERMS-DEED. By acceptance of the conveyance to their property, future owners of the parcels described in Section 1 above become parties to and are bound by this Agreement whether or not expressly stated in any conveyance.

7. MAINTENANCE AND REPAIR OF THE ELEMENTS AND THE EASEMENT. Declarant and Declarant's successors in interest agree to maintain the Elements in good condition and repair, and in compliance with the appropriate Oregon Specialty Code. Elements shall not be altered without building permits, where required by the appropriate Oregon Specialty Code. Elements identified or necessary for lateral stability including, but not limited to, structural sheathing and connectors, shall not be altered without the analysis and approval of a structural engineer registered in the State of Oregon.

[The cost of reasonable repair and maintenance of Elements shall be shared by the property owners who make use of the Elements in proportion to such use. If a property owner disturbs any of the Elements in any way, such owner shall bear the full cost and responsibility of returning such Elements to the conditions they were in prior to such disturbance.] [PLEASE NOTE: THIS IS SAMPLE LANGUAGE ONLY; PARTIES MAY CHOSE TO ADOPT ANY COST SHARING AND MAINTENANCE ARRANGEMENT THEY AGREE ON.]

A property owner repairing or reconstructing an Element shall have the right to access over the adjacent property owner's lot to the extent reasonably necessary to affect the repair or construction. Property owners will return the Element to the same condition it was in prior to the repair or maintenance. All maintenance and repairs shall be completed within a reasonable period of time.

If any portion of any shared fire wall or other part of a building or structure now or hereafter constructed upon the parcels described in Section 1 above encroaches upon any part of the lot or lots used or designated for use by another property owner, an easement for the encroachment and for the maintenance of same shall immediately be granted and reserved and shall exist and be binding upon the owner and upon all present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements shall be immediately granted and reserved in and upon each unit and lot to repair.

8. INDEMNIFICATION. Declarant, Declarant's successors and assigns shall hold harmless, defend and indemnify the City of Portland, its officers, agents, officials, and employees against all claims, demands, actions and suits, including attorneys' fees and costs, brought against any of them arising out of or resulting from the terms of this Agreement.

9. USE OF EASEMENT BY OWNERS OF PROPERTY. Declarant, Declarant's successors and assigns shall be allowed access to the easement and use of the easement so long as such use does not interfere with the use of the easement for its intended purpose

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or obstruct any portion of the easement. Declarant shall not place or allow any obstructions to be placed within the easement that would in any way interfere with the use of the easement for its intended purpose.

10. CONSIDERATION. Part of the consideration for the execution of this Agreement is to provide for compliance with the most current Oregon Residential Specialty Code Section R302.2.1, which provides that where townhouses are separated by real property lines and any building elements or utilities cross such real property lines, an easement and maintenance agreement must be created and signed by the affected property owners. Such easement and maintenance agreement must be provided in a form that is acceptable to the City of Portland as the local building official.

11. THIRD PARTY BENEFICIARY. Declarant agrees that the City of Portland is intended to be the sole third party beneficiary of this Agreement, and that this Agreement shall not be modified or suspended without the prior written approval of the City of Portland building official.

12. OREGON LAW AND FORUM. This Agreement shall be construed according to the laws of the State of Oregon even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction. Any litigation arising under or regarding this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Any arbitration or other form of alternative dispute resolution arising out of this Agreement shall take place in an appropriate forum within Portland, Oregon.

13. SEVERABILITY. Each provision of this Agreement shall be independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

DECLARANT:

_____ DATE: _____
(signature)

By: _____
(printed name)

Title: _____

ADDRESS:

(mailing address)

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STATE OF OREGON

County of _____

Personally appeared before me this _____ day of _____, 20____,

_____ (name) and acknowledged the foregoing instrument to be his/her voluntary act and deed.

By: _____
Notary Public for Oregon

My Commission Expires: _____

Approved as to form:

_____ Date: _____
Building Official or Designee (*signature*)

_____, _____
(*printed name*) (title)

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EXHIBIT A

Legal Description of Parcels

EXHIBIT B

Plat Describing Easement and Common/Shared Elements

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