



When recorded, mail to:

Greater Salt Lake Municipal Services District
Grading, Floodplain and Stormwater Manager
Po Box 147700
Salt Lake City, Utah 84114

Affects Parcel No(s): _____

STORMWATER MAINTENANCE AGREEMENT

This Stormwater Maintenance Agreement (this "Agreement") is made and entered into this _____ day of _____, 20____, by and between Kearns City, a municipal corporation of the State of Utah (the "City"); and _____ (the "Owner").

RECITALS

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City, as set forth in the City Stormwater Ordinance, as amended ("Ordinance"), adopted pursuant to the Utah Water Quality Act, as set forth in UTAH CODE ANN.

§§ 19-5-101, *et seq.*, as amended (the "Act"); and

WHEREAS, by contract, Greater Salt Lake Municipal Services District (the "Agent") is Kearns agent to provide all regulatory and management controls for the disposition of storm and surface waters, including the power to enforce the City's Ordinance; and

WHEREAS, the Owner hereby represents and acknowledges that it is the owner in fee simple of certain real property more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"), which property is subject to regulation by the City as laid out above; and

WHEREAS, the Owner desires to build or develop the Property and/or to conduct certain regulated construction activities on the Property which will alter existing storm and surface water conditions on the Property and/or adjacent lands; and

WHEREAS, in order to facilitate these anticipated changes, the Owner desires to build and maintain, at Owner's expense, storm and surface water management facilities, including structures, improvements, and/or vegetation to control the quantity and quality of the storm water (the "Stormwater Facilities"); and

WHEREAS, the Stormwater Facilities are shown in the final site plan or subdivision approved for the Property, in any related engineering drawings, and in any amendments thereto, which plans and drawings are on file in the office of the Cities agent's Planning and Development Services Division, and are hereby incorporated herein by this reference (the "Development Plan"); and

WHEREAS, a detailed description of the Stormwater Facilities, which includes the operation and routine maintenance procedures required to enable the Stormwater Facilities to perform their designed functions (the "Stormwater Management Plan"), is attached hereto as Exhibit "B" and is incorporated herein by this reference; and

WHEREAS, as a condition of the Development Plan approval, and as required by the Small MS4 General Permit No. UTR090101 ("UPDES Permit") from the State of Utah, Owner is required to enter into this Agreement establishing a means of documenting the execution of the Stormwater Maintenance Plan.

AGREEMENT

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the Cities approval of the Stormwater Maintenance Plan through its agent, Greater Salt Lake Municipal Services District, and the mutual covenants contained herein, the parties agree as follows:

SECTION 1

Construction of Stormwater Facilities. The Owner shall, at its sole cost and expense, construct the Stormwater Facilities in strict accordance with the Development Plan, specifications, and any amendments thereto which have been approved by the City or its agent.

SECTION 2

Maintenance of Stormwater Facilities. The Owner shall, at its sole cost and expense, operate and maintain the Stormwater Facilities in strict accordance with the Stormwater Maintenance Plan. Owner's maintenance obligations shall be limited to structures, systems, and appurtenances on Owner's land, including all system and appurtenance built to convey stormwater, as well as all structures, improvements, and vegetation provided solely to control the quantity and quality of the stormwater. Maintenance, for purposes of this Agreement, is defined as good working condition so that the Stormwater Facilities are performing their design functions. The Owner shall, at its sole cost and expense, perform all work necessary to keep the Stormwater Facilities in good working condition.

SECTION 3

Annual Maintenance Report. The Owner shall, at its sole cost and expense, inspect the Stormwater Facilities and submit an inspection report and certification to Cities agent annually. The purpose of the inspection and certification is to assure safe and proper functioning of the Stormwater Facilities. The annual inspection shall cover all aspects of the Stormwater Facilities, including, but not limited to, the parking lots, structural improvements, berms, channels, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies shall be noted in the inspection report. The report shall also contain a certification as to whether adequate maintenance has been performed and whether the structural controls are operating as designed to protect water quality. The annual inspection report and certification shall be due by July 31, of each year and shall be in a form acceptable to the Cities agent.

SECTION 4

Oversight Inspection Authority. The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Stormwater Facilities upon reasonable notice to the Owner. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City or its agent. The purpose of the inspection shall be to determine and ensure that the Stormwater Facilities are adequately maintained, are continuing to perform in an adequate manner, and are in compliance with all applicable laws, regulations, rules, and ordinances, as well as the Stormwater Maintenance Plan.

SECTION 5

Notice of Deficiencies. If the City or its agent finds the Stormwater Facilities contain any defects or are not being maintained adequately, the City or its agent shall send the Owner written notice of the defects or deficiencies and provide the Owner with reasonable time to cure such defects or deficiencies, as provided in City Ordinances Section 17.22. Such notice shall be confirmed delivery to the Owner or sent certified mail to the Owner at the Property address.

SECTION 6

Owner to Make Repairs. The Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the Stormwater Facilities as may be determined as reasonably necessary by the City or its agent within the required cure period to ensure the Stormwater Facilities are adequately maintained and continue to operate as designed and approved.

SECTION 7

Corrective Action. In the event the Owner fails to adequately maintain the Stormwater Facilities in good working condition acceptable to the City and its agent, the City or its agent may proceed with any enforcement mechanism provided in City Ordinance Section 17.22. The Town or its agent may also give written notice that the Stormwater Facilities will be disconnected from the Cities municipal separate storm sewer system. Any damage resulting from the disconnected system will be the Owner's responsibility. It is expressly understood and agreed that neither the City nor its agent are under any obligation to maintain or repair the Stormwater Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City or its agent. The actions described in this Section are in addition to and not in lieu of the legal remedies available to the City as provided by law for Owner's failure to remedy deficiencies or any other failure to perform under the terms and conditions of this Agreement.

SECTION 8

Reimbursement of Costs. In the event the City or its agent, pursuant to this Agreement, incurs any costs, or expends any funds resulting from enforcement or cost for labor, use of equipment, supplies, materials, and the like related to storm drain disconnection from the Cities municipal separate storm sewer system, the Owner shall reimburse the City or its agent upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City or its agent. After said thirty (30) days, such amount shall be deemed delinquent and shall be subject to interest at the rate of ten percent (10%) per annum. Owner shall also be liable for any collection costs, including attorney's fees and court costs, incurred by the City or its agent in collection of delinquent payments. The Owner hereby authorizes the City or its agent to assess any of the above-described costs, if remained unpaid, by recording a lien against the Property.

SECTION 9

Successors and Assigns. This Agreement shall be recorded in the office of the County Recorder and the covenants and agreements contained herein shall run with the land and whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Agreement which shall apply to, bind and be obligatory upon the Owner hereto, its successors and assigns, and shall bind all present and subsequent owners of the Property described herein.

SECTION 10

Severability Clause. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Owner, its successors and assigns, is held invalid, the remainder of this Agreement shall not be affected thereby.

SECTION 11

Utah Law and Venue. This Agreement shall be interpreted under the laws of the State of Utah. Suits for any claims or for any breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Salt Lake County, Utah.

SECTION 12

Indemnification. This Agreement imposes no liability of any kind whatsoever on the City or its agent. The Owner hereby agrees to indemnify and hold the City and its officers, employees, agents and representatives from and against all actions, claims, lawsuits, proceedings, liability, damages, losses, and expenses (including attorneys' fees and court costs) that result from the performance of this agreement, but only to the extent the same are caused by any negligent or wrongful act or omissions of the Owner, and the Owner's officers, employees, agents, and representatives.

SECTION 13

Amendments. This Agreement shall not be modified except by written instrument executed by the City and the owner of the Property at the time of modification, and no modification shall be effective until recorded in the office of the County Recorder.

SECTION 14

Subordination Requirement. If there is a lien, trust deed or other property interest Recorded against the Property, the trustee, lien holder, etc., shall be required to execute a subordination agreement or other acceptable recorded document agreeing to subordinate their interest to this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have signed and subscribed their names hereon and have caused this Agreement to be duly executed as of the day and year first set forth above.

OWNER

By:

Title: _____

By: _____

Title: _____

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The above instrument was acknowledged before me by _____,
this ____ day of _____, 20____.

[SEAL]

NOTARY PUBLIC
Residing in Salt Lake County

City

**CITY SIGNATURE
(INCLUDE ONLY IF NECESSARY)**

By: _____

City Council Chair

ATTACHMENTS:

Exhibit A (Plat and Legal Description)

Exhibit B (Stormwater Management Plan)

Exhibit C (8.5" x 11" Grading and Drainage plan)