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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SOUTH JORDAN
1600 W TOWNE CENTER DR
SOUTH JORDAN UT 84095-8265
BY: LHA, DEPUTY - WI 8 P.

When recorded, mail to:

South Jordan City Recorder
1600 Towne Center Drive
South Jordan, Utah 84095

Affects Parcel No(s): 26-24-400-016

**SOUTH JORDAN CITY
STORMWATER FACILITIES
MAINTENANCE AGREEMENT**

This Stormwater Facilities Maintenance Agreement ("Agreement") is made and entered into this 15 day of OCTOBER, 2015, by and between South Jordan City, a Utah municipal corporation ("City"), and DAYBREAK DEVELOPMENT COMPANY, a DELAWARE CORPORATION ("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 South Jordan 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 ("Act"); 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 ("Property"); 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 accommodate and regulate these anticipated changes in existing storm and surface water flow conditions, the Owner desires to build and maintain at Owner's expense a storm and surface water management facility or improvements ("Stormwater Facilities"); and

WHEREAS, the Stormwater Facilities are more particularly described and shown in the final site plan or subdivision approved for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with the City and are hereby incorporated herein by this reference ("Development Plan"); and

WHEREAS, as a condition of Development Plan approval, and as required as part of the City's Small MS4 UPDES General Permit from the State of Utah, Owner is required to enter into this Agreement addressing the maintenance requirements for the Stormwater Facilities and control measures installed on the Property.

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the City's approval of the Development Plan, and the mutual covenants contained herein, the parties agree as follows:

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

2. **Maintenance of Stormwater Facilities.** The Owner shall, at its sole cost and expense, adequately maintain the Stormwater Facilities. Owner's maintenance obligations shall include all pipes and channel built to convey stormwater, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate 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. In the event that a maintenance schedule is set forth in the Development Plan, such maintenance schedule shall be followed.

3. **Annual Inspection of Stormwater Facilities.** The Owner shall, at its sole cost and expense, inspect the Stormwater Facilities and submit an inspection report and certification to the City 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 structural improvements, berms, 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 31st of each year and shall be on forms acceptable to the City.

4. **City 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 whenever deemed necessary by the City. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspection shall be to determine and ensure that the Stormwater Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the Development Plan.

5. **Notice of Deficiencies.** If the City finds that the Stormwater Facilities contain any defects or are not being maintained adequately, the City shall send Owner written notice of the defects or deficiencies and provide Owner with a reasonable time to cure such defects or deficiencies. Such notice shall be hand-delivered to the Owner or sent certified mail to the Owner at the Property address.

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 within the required cure period to ensure that the Stormwater Facilities are adequately maintained and continue to operate as designed and approved.

7. **City's Corrective Action Authority.** In the event the Owner fails to adequately maintain the Stormwater Facilities in good working condition acceptable to the City, after due notice of deficiencies as provided in Section 5, the City may enter upon the Property and take whatever steps necessary to correct deficiencies and to charge the costs of such repairs to the Owner. It is expressly understood and agreed that the City is under no 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. The actions described in this Section are in addition to and not in lieu of any and all 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.

8. **Reimbursement of Costs.** In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City. 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 attorneys' fees and court costs, incurred by the City in collection of delinquent payments.

9. **Successor and Assigns.** This Agreement shall be recorded in the Salt Lake County Recorder's Office 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.

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 Covenant shall not be affected thereby.

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

12. Indemnification. This Agreement imposes no liability of any kind whatsoever on the City and the Owner agrees to hold the City harmless from any liability in the event the Stormwater Facilities fail to operate properly. The Owner shall indemnify and hold the County harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against the City from the construction, presence, existence, or maintenance of the Stormwater Facilities.

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 Salt Lake County Recorder's Office.


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 the Agreement.

[Signature page to follow]

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

"City"
South Jordan City

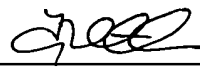
Approved as to Form:



Attorney for South Jordan City

By: Bud Klawns
Its: City Engineer

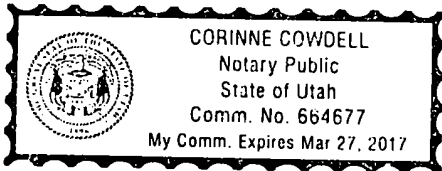
"Owner"
DAYBREAK DEVELOPMENT COMPANY

By: 
Print Name: TY MCCUTCHEON
Title: VICE PRESIDENT DAYBREAK

CITY ACKNOWLEDGMENT

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

On the 22 day of October, 2015, personally appeared before me Brad Klavano, who being duly sworn, did say that he/she is the city Engineer of **SOUTH JORDAN CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in his/her capacity as land use authority on behalf of the City for approval of Stormwater Facilities Maintenance Agreements.



Corinne Cowdell
Notary Public

My Commission Expires:
3/27/2017

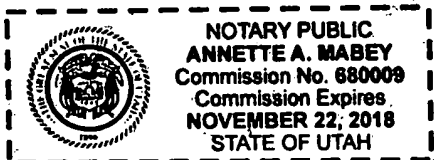
Residing at:
salt lake county

OWNER ACKNOWLEDGMENT

Note: If Owner is a corporation, limited liability company, partnership, trust or other legal entity, rather than an individual, a separate applicable acknowledgement must be provided.

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

On the 15th day of October, 2015, personally appeared before me Ty McCutcheon, who being duly sworn, did say that he/she is the legal property owner of record of the property subject to this Maintenance Agreement and that he/she has executed this Agreement with full authority to do so.



Annette Mabe
Notary Public

My Commission Expires: 11/22/2018

Residing at: South Jordan, Utah

Exhibit "A"

Property Legal Description

**Kennecott Daybreak South Station Multi Family #1 Subdivision
Boundary Description**

Parcel A

Commencing at the South Quarter corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian (basis of bearing being South 89°58'42" East – 2677.868 feet between the South Quarter corner and the Southeast corner of said Section 24) and running South 89°58'42" East along the south line of said Section 24 for 989.628 feet; thence North 00°01'18" East perpendicular to said section line for 1656.137 feet to the southeastern corner of Grandville Avenue as described in a Quit Claim Deed recorded May 16, 2008 in Book 9607 at Page 4745 in the office of the Salt Lake County Recorder, said corner also lying North 53°27'06" East 204.000 feet from the northwest corner of Kennecott Daybreak Plat 4 Subdivision recorded in Book 2005P at Page 160 in the office of the Salt Lake County Recorder, said corner also being the POINT OF BEGINNING; thence along the eastern right of way of said Grandville Avenue for the following two (2) courses: North 36°32'54" West for 67.114 feet; thence with a non-tangent curve to the left having a radius of 130.500 feet whose center bears North 55°33'17" West with a central angle of 61°17'18" (chord bearing and distance of North 03°48'04" East – 133.033 feet) for an arc distance of 139.594 feet; thence North 53°27'06" East along the south right of way of Daybreak View Parkway as shown on Kennecott Daybreak View Parkway Subdivision recorded in Book 2008P at Page 229 in the office of the Salt Lake County Recorder for 696.619 feet to the western boundary of Kennecott Daybreak Apartment Venture #1 recorded in Book 2008P at Page 279 in the office of the Salt Lake County Recorder; thence along said western boundary for the following three (3) courses: South 43°33'47" East for 145.360 feet; thence with a curve to the right having a radius of 100.000 feet with a central angle of 07°00'52" (chord bearing and distance of South 40°03'21" East – 12.235 feet) for an arc distance of 12.243 feet; thence South 36°32'54" East for 12.016 feet to the northern boundary of said Kennecott Daybreak Plat 4 Subdivision; thence along said northern boundary South 53°27'06" West for 801.251 feet to the POINT OF BEGINNING.

Containing 127,613 square feet or 2.9296 acres.

**SUPPLEMENTAL CONTACT INFORMATION SHEET
FOR
SOUTH JORDAN CITY
STORMWATER FACILITIES
MAINTENANCE AGREEMENT**

CONTACT INFORMATION

Name (Main Contact): DAYBREAK DEVELOPMENT COMPANY Phone: 801-204-2000
Address: 4700 W. DAYBREAK PARKWAY
City: SOUTH JORDAN State: UT Zip: 84009
Contact Person: GARY LANGSTON Phone: 801-204-2769
Contact Email: gary.langston@riofirst.com

SECONDARY CONTACT INFORMATION (ASSIGNED/ OR DEPARTMENT)

Name (Main Contact): DAYBREAK COMMUNITY ASSOCIATION Phone: 801-254-8062
Address: 11347 S. KESTREL RISE ROAD
City: SOUTH JORDAN State: UT Zip: 84009
Contact Person: CINDY SPILLANE Phone: 801-254-8062
Contact Email: cspillane@ecmcnet.com