

WHEN RECORDED, MAIL TO:
COTTONWOOD HEIGHTS
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

Attn.: Community Development Director

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06/18/2015 10:51 AM \$0.00
Book - 10335 Pg - 1455-1460
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
COTTONWOOD HEIGHTS
1265 E FORT UNION BLVD STE 340
COTTONWOOD HEIGHTS UT 84047
BY: TRA, DEPUTY - MA 6 P.

SPACE ABOVE FOR RECORDER'S USE

Easement Agreement (Storm Drain Repair and Maintenance)

THIS EASEMENT AGREEMENT (this "*Agreement*") is made effective 9 June 2015 by **ARLENE J. CURTIS** as trustee of the **ARLENE J. CURTIS FAMILY TRUST**, whose address is 1667 East Creek Road, Cottonwood Heights, UT 84047 ("*Owner*"), in favor of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*").

RECITALS:

A. Owner owns legal title to the improved, residential real property (the "*Property*") that is commonly known as 1667 East Creek Road, Cottonwood Heights, UT 84047 and is particularly described on attached Exhibit "A."

B. A public storm drain line (together with all catch basins, grates, culverts and other components and appurtenances, called herein the "*Drain*") runs along the westerly lot line of the Property substantially as shown on attached Exhibit "B" (the "*Map*").

C. Owner desires to grant to City certain easements on, under and across the Property to allow City to construct, reconstruct, repair and maintain the Drain, as provided in this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

Section 1. **Grant of Easements.** City and its contractors shall have an easement over and across Owner's Property providing unimpeded access for workmen, vehicles and equipment for the following purposes related to the Drain and the carrying out of City's other rights or duties under this Agreement. Such easement consists of two components:

(a) **Temporary Construction Easement.** A temporary easement (the "*Construction Easement*") across any and all of the Property that is located within 15 feet of the centerline of the current Drain for the purpose of allowing City to construct, re-construct, repair or maintain the Drain, which Construction Easement shall terminate on 25 November 2016; and

(b) **Maintenance Easement.** A easement (the "*Maintenance Easement*") across any and all of the Property that is located within ten feet of the centerline of the new, reconstructed or repaired Drain from time to time, which Maintenance Easement shall be perpetual.

The Construction Easement and the Maintenance Easement are jointly called the "*Easements*" in this Agreement. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that an existing residence (the "*Residence*") may be located within the area of the Easements (the "*Easement Area*") described above, and agree that nothing in this Agreement shall authorize City or its contractors to, nor require Owner to, remove, modify or otherwise adversely affect the Residence in order to facilitate use of the Easements. Further, however, if the Residence actually does encroach into the Easement Area, Owner and City shall cooperate to shift or reposition the Easement Area as reasonably necessary to provide an Easement Area of comparable width to provide City and its contractors with sufficient access to the Drain under the then-existing circumstances.

Section 2. **Owner's Duties.** Owner covenants and agrees not to do anything or to erect any barrier that will hinder, delay or limit use of the Easements by City or its contractors in connection with the initial construction, reconstruction, repair, maintenance or replacement of the Drain; any future construction, reconstruction, repair, maintenance or replacement of the Drain; or the performance of City's other rights or duties under this Agreement.

Section 3. **City's Duties.** City covenants and agrees as follows:

(a) **Notice.** Absent emergency conditions, City shall use its diligent best efforts to give Owner at least 48 hours' prior notice (verbal or written) of the impending use of the Easements by City or its contractors;

(b) **Restrained Entry.** In using the Easements, City and its contractors shall diligently endeavor to minimize to the greatest extent reasonably possible any resulting intrusion onto, or damage to, the Property; and

(c) **Restoration.** Following use of the Easements, City shall cause the Property to be restored at City's cost to comparable condition as existed prior to such entry by City or its contractors, except to the extent that such entry by City or its contractors was necessitated by the negligent or intentional misuse of or damage to the Drain or the area of the Easements by Owner or its officers, employees, contractors, renters, agents, etc.

4. **Covenants Run with Land.** Owner's obligations under this Agreement shall (a) create an equitable servitude on the Property in favor of City; (b) constitute a covenant running with the land; (c) bind every person having any fee, leasehold or other interest in any portion of the Property affected by this Agreement at any time or from time to time; and (d) inure to the benefit of and be binding upon Owner and City, and their respective successors and assigns.

5. **Immunity Act; No City Liability.** City is a governmental entity under the "Utah Governmental Immunity Act" (UTAH CODE ANN. § 63-30d-101, *et seq.*) (the "*Immunity Act*"). Consistent with the terms of the Immunity Act, City shall be responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees, but does not waive any (a) defenses otherwise available to City under the Immunity Act, nor (b) any limits of liability currently provided by the Indemnity Act.

6. **General Provisions.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original. The

provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement. This Agreement may not be modified except by an instrument in writing signed by the parties hereto. Time is the essence of this Agreement. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

DATED effective the date first-above written.

OWNER:

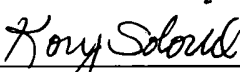


Arlene J. Curtis as Trustee of the **ARLENE J. CURTIS FAMILY TRUST**

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

On 10 June 2015, personally appeared before me **Arlene J. Curtis**, who duly acknowledged to me that she executed the foregoing Easement Agreement as the trustee of, and on behalf of, the **ARLENE J. CURTIS FAMILY TRUST**.





Notary Public

Exhibit "A"
to Easement Agreement

LOT 2, GARY CURTIS SUBDIVISION, according to the official plat thereof on file and of record in the office of the Recorder of Salt Lake County, Utah.

Parcel No. 22-33-128-027-0000

Exhibit "B"
to Easement Agreement

(Attach Aerial View of Property, Showing Location of Drain)

