

After recording, please mail to:

City of South Jordan
Attn: City Recorder
1600 Towne Center Drive
South Jordan, Utah 84095

13951647 B: 11338 P: 7277 Total Pages: 9
05/13/2022 10:34 AM By: zjorgensen Fees: \$0.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: SOUTH JORDAN
1600 W TOWNE CENTER DR SOUTH JORDAN, UT 84095



Affects Parcel No(s): Lot C-109 : 26-24-353-001

Property/Subdivision: Kennecott Daybreak Village 7A Plat 1

Project Name: Ace Hardware

STORMWATER FACILITIES MAINTENANCE AGREEMENT

This Stormwater Facilities Maintenance Agreement (this "Agreement") is made between the City of South Jordan, a Utah municipal corporation (the "City"), and by

DB Trail Crossing, LLC, a
_____, ("Owner").

RECITALS

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

B. 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").

C. 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.

D. 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 the Owner's expense, a storm and surface water management facility and control measures ("Stormwater Facilities") on the Property.

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

F. 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, the Owner is required to enter into this Agreement addressing the maintenance requirements for the Stormwater Facilities.

The parties agree as follows:

1. **Construction of Stormwater Facilities.** The Owner shall, at its sole cost and expense, construct the Stormwater Facilities in 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 on the Property. 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 keeping the Stormwater Facilities in good working condition so that the Stormwater Facilities are performing their design functions. 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, commencing the year after the Stormwater Facilities are constructed and complete, and shall be on forms acceptable to the City to be submitted to the Storm Water Department either by Email or postal mail.

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. The City shall give the Owner not less than 48 hours prior notice of an inspection, except in the event of an emergency. Inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspections 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. The Owner shall be entitled to have its representative accompany the City's inspectors on the Property.

5. **Notice of Deficiencies.** If the City reasonably finds that the Stormwater Facilities contain any defects or are not being adequately maintained, the City shall send the Owner written notice of the defects or deficiencies and provide Owner with a reasonable time to cure such defects or deficiencies ("Notice of Deficiency" or "Notice"). The 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 within the cure period stated in the Notice of Deficiency.

7. **The City's Corrective Action Authority.** If the Owner fails to correct the items in the Notice of Deficiency, the City may enter upon the Property and take whatever steps are reasonably required to correct any deficiencies and may 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 performs any work or expends any funds to correct any deficiency in the Notice, including without limitation, labor, use of equipment, supplies, materials, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt of supporting documentation. 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. The Owner shall also be liable for any collection costs, including attorneys' fees and court costs, incurred by the City in collection of delinquent payments or enforcement of this Agreement.

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 operators, successors, or assigns, and shall bind all present and subsequent owners of the Property.

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.

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.** The Owner specifically and expressly agrees to indemnify, and save and hold harmless the City (including without limitation its elected and appointed officers, employees, successors, and assigns) from and against any and all demands, liabilities, claims, damages, actions, attorney fees, or other costs incurred by the City and/or proceedings in law or equity (including reasonable attorneys' fees and costs of suit), to the extent caused by or resulting from any negligence, gross negligence, intentional misconduct, or under any other actionable fault of the Owner (including without limitation its employees, agents, operators, subcontractors, or contractors) in the performance or failure of performance of the Owner provided herein, or to be provided hereunder.

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]

This Agreement is effective on the date that the last party executes this Agreement as indicated by the date stated under that party's signature line.

THE CITY ACKNOWLEDGMENT

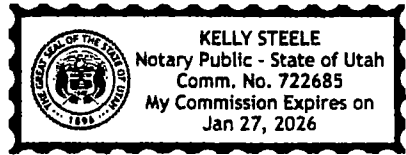
Signature: Brad Klavano
Name: Brad Klavano
Title: City Engineer
Date: 5/12/2022

State of Utah)
 :SS
County of Salt Lake)

On this 12 day of May, 2022, personally appeared before me Brad Klavano, who being by me duly sworn, did say that he is the City Engineer of South Jordan City, a municipal corporation, and that said instrument was signed in behalf of the City by authority of its governing body and said signatory acknowledged to me that the City executed the same.

Witness my hand and official seal.

Kelly Steele
(Notary signature)



(notary seal)

THE OWNER(S) ACKNOWLEDGMENT

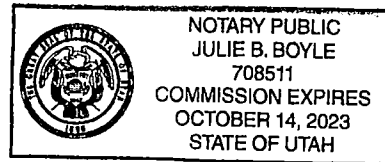
Signature: *Spencer H. Wright*
Name: SPENCER H. WRIGHT
Title: MANAGER
Date: 1/27/2022

State of Utah)
County of ^{Davis} Salt Lake :SS)

On this 27 day of January, 2022, personally appeared before me _____
Spencer H. Wright, whose identity is personally known to me, or proven on the basis of
satisfactory evidence and who by me duly sworn/affirmed acknowledged that he/she executed the
same.

Witness my hand and official seal.

Julie B. Boyle
(Notary signature)



(notary seal)

[signature page for those signing in representative capacity follows]

Note: If Owner is a corporation, Limited Liability Company, Partnership, Trust or other legal entity, rather than an individual, the following signature and acknowledgement must be used.

Owner: _____
By: _____
Name: _____
Title: _____
Date: _____

Representative Capacity Acknowledgement

State of _____)

§

County of _____)

On this _____ day of _____, 20_____, personally appeared before me, _____ (*name of document signer(s)*), whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the, _____ (*title of office*) of, _____ (*name of legal entity*) and that said document was signed by him/her in behalf of said legal entity by Authority of its Bylaws, Resolution of its Board of Directors, Trust documents or other authorizing documents and said, _____ (*name of document signer(s)*) acknowledged to me that said legal entity and owner executed the same.

Witness my hand and official seal.

(*Notary signature*)

(*notary seal*)

EXHIBIT A

(Property Legal Description)

Lot C-109, Kennecott Daybreak Village 7A Plat 1, according to the official plat
thereof recorded on November 20, 2015 in the office of the Salt Lake County
Recorder. Recorded No. 12174130. Book 2015P at Page 261.

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

CONTACT INFORMATION

Name (Main Contact): Dale WanWagoner Phone: 801-773-2339
Address: 1178 Legacy Crossing Blvd
City: Centerville State: VT Zip: 84014
Contact Person: Dale Phone: 801-776-0769
Contact Email: dale@somersetpm.com

SECONDARY CONTACT INFORMATION (ASSIGNED/ OR DEPARTMENT)

Name (Main Contact): Sam Hansen Phone: 801-773-7339
Address: 1178 Legacy Crossing Blvd
City: Centerville State: VT Zip: 84014
Contact Person: Dale Phone: _____
Contact Email: sam@wrightdevelopment.com