

13.
AFTER RECORDING RETURN TO:

MAKADAMS LLC
c/o Jeffrey E. Adams
1448 W 950 N
Provo, Utah 84604

13960863 B: 11343 P: 6715 Total Pages: 13
05/31/2022 11:22 AM By: asteffensen Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: MAKADAMS LLC
1448 W 950 N PROVO, UT 84604



**DECLARATION OF SHARED MAINTENANCE
COVENANTS, CONDITIONS, AND RESTRICTIONS
CONCERNING
COMMON STORMWATER DRAINAGE, COLLECTION AND CONVEYANCE
SYSTEM**

(East Capitol Gardens Subdivision)

THIS DECLARATION OF SHARED MAINTENANCE COVENANTS, CONDITIONS, AND RESTRICTIONS CONCERNING STORMWATER DRAINAGE, COLLECTION AND CONVEYANCE SYSTEM (this “**Declaration**”) is made and executed as of December 31, 2021 by MAKADAMS LLC, a Utah limited liability company, with a principal place of business located at 1448 West 950 North, Provo, Utah 84604 (“**Declarant**”).

RECITALS

WHEREAS, Declarant owns that certain real property known as the East Capitol Gardens Subdivision, whose Assessor Parcel Numbers are 09-31-104-043, 09-31-104-024, and 09-31-104-048 (the “**Subdivision**”) and whose plat is recorded in the official records of the Recorder of Salt Lake County, State of Utah. A reduce-sized copy of said plat is set forth in Exhibit “A” attached hereto and incorporated by reference herein (the “**Plat**”);

WHEREAS, the Subdivision consists of six (6) legal lots for residential development identified in the Subdivision’s plat as Lot #1, Lot #2, Lot #3, Lot #4, Lot #5, and Lot #6 (each, a “**Lot**” and collectively, the “**Lots**”), each of which Declarant intends to sell to third parties;

WHEREAS, the City of Salt Lake (“**City**”) requires that storm and other surface water that may accumulate on each Lot in the Subdivision be collected, drained, conveyed and discharged to the City’s stormwater sewer;

WHEREAS, the most efficient and effective means of collecting, draining, conveying and discharging storm and other surface water to the City’s stormwater sewer is by a shared stormwater drainage, collection and conveyance system crossing the property lines of the Subdivision’s Lots (the “**East Capitol Gardens Shared Stormwater Management Facility**” or “**Facility**”);

WHEREAS, the Subdivision’s plat contemplates the installation and operation of, and Declarant intends to construct, the East Capitol Gardens Shared Stormwater Management Facility in easements identified on the Plat as the “**Center Stormwater Management Facility**”

Easement” and the “East/West Stormwater Management Facility Easement” (collectively referred to hereinafter as the “**Stormwater Management Facility Easements**”);

WHEREAS, Declarant desires to dedicate the East Capitol Gardens Shared Stormwater Management Facility for the common use, ownership and benefit of, and the common operation, maintenance, service and repair by, each person owning, now or hereafter, the Subdivision and any Lot or portion thereof (the “**Owners**”); and

WHEREAS, in making and recording this instrument Declarant desires to subject itself, as current owner of the Subdivision and each of the Lots in the Subdivision, as well as any and all future Owners, to the covenants, conditions restrictions, and easements of this Declaration and thereby, among other things, comply, now and hereafter, with § 17.84.900 of the City’s Ordinances, which makes it unlawful to direct or discharge stormwater onto any property or into any conveyance facilities without the legal agreement and consent of the owners of the affected property.

NOW, THEREFORE, Declarant hereby covenants, agrees, and declares that the Subdivision and each of the subdivided Lots thereof as described previously in the Recitals to this Declaration shall be held, transferred, sold, conveyed, occupied, and used, now and hereafter, subject to the covenants, conditions, restrictions, easements, and other obligations and requirements hereinafter set forth, said covenants, conditions, restrictions, easements and other obligations and requirements to run with title to the Subdivision and each of the subdivided Lots thereof, to be binding upon all parties having any right, title, or interest in the Subdivision and any Lot or portion thereof, their heirs, successors, successors-in-title, and assigns, and to inure to the benefit of each Owner.

ARTICLE 1 EASEMENTS

1.1 The Subdivision and each Lot thereof shall be subject to perpetual, non-exclusive easements identified on the Plat as the “Center Stormwater Management Facility Easement” and “East/West Stormwater Management Facility Easement” and referred to collectively herein as the Stormwater Management Facility Easements. The legal descriptions of the easements are located in Exhibit B.

1.2 The Stormwater Management Facility Easements shall be for the construction, installation, operation, maintenance, repair and improvement of the East Capitol Gardens Shared Stormwater Management Facility and shall permit access, now and hereafter, to the Owners and their authorized occupants, contractors, service providers, agents, and invitees consistent with the foregoing stated purpose.

1.3 In addition to the Stormwater Management Facility Easements identified in Section 1.1 hereof, each Owner hereby grants to all other Owners a temporary construction easement across the entire Lot owned by such party for the purpose of maintaining, servicing,

repairing or improving the East Capitol Gardens Shared Stormwater Facility, as provided for in this Declaration.

ARTICLE 2 OWNERSHIP AND MAINTENANCE

2.1 The East Capitol Gardens Shared Stormwater Management Facility, as constructed and installed by the Declarant and thereafter operated, maintained, serviced, repaired or improved by the Owners, shall be commonly owned and operated by the Owners, each having and holding an equal, undivided ownership interest in said Facility for the term of his, her or its ownership of property in the Subdivision. By so owning and operating the East Capitol Gardens Shared Stormwater Management Facility, each Owner hereby agrees to receive storm or other surface water drained, collected and conveyed by said Facility on and from neighboring properties into and through that portion of the Facility located on his, her or its own property, in compliance with § 17.84.900 of the City's Ordinances.

2.2 The East Capitol Gardens Shared Stormwater Management Facility shall be maintained, serviced, repaired and improved by its owners, jointly and severally, in such a way that the Facility remains operable and usable for its intended purpose. For purposes of this Declaration, the terms "maintain," "service", and "repair" and their cognates include, without limitation, cleaning and clearing obstructions, trimming grass and brush, removing snow and ice, and performing all other work necessary to keep the Facility in a condition that allows for the proper drainage, collection, conveyance and discharge to the City's stormwater sewer of storm and other surface water accumulating in the Subdivision and on the Lots thereof.

2.3 The cost of maintaining, servicing, repairing and improving the East Capitol Gardens Shared Stormwater Management Facility shall be shared equally by the Owners, regardless of the size of any Owner's particular Lot or other interest in the Subdivision; *provided, however*, that in the event that an Owner, including its authorized occupants, contractors, service providers, agents, or invitees, (a) causes damage to the Facility, other than ordinary wear and tear, or (b) releases, discharges, or otherwise disposes or permits to be disposed any material into the Facility other than storm or surface water, which causes (i) blockage of flow in and through the Facility, (ii) damage to other property connected to the Facility, or (iii) discharge from the Facility to the City's stormwater sewer contrary to applicable law, said Owner shall be solely responsible for the damage, repair, corrective action, and other liability arising therefrom.

ARTICLE 3 GOVERNANCE

3.1 A majority vote of the Lots is required for any maintenance, service, repair or improvement of the East Capitol Gardens Shared Stormwater Management Facility and for

3.2 If any Owner performs maintenance, service, repair or improvement on the East Capitol Gardens Shared Stormwater Management Facility without prior approval, the Owner performing such work shall be liable for the entire cost thereof, unless such work is deemed an emergency. However, where emergency maintenance, service, repair or improvement is necessary to protect life or property from material damage, injury or loss, neither majority vote nor prior approval is necessary before undertaking such maintenance, service, repair or improvement.

3.3 If a dispute arises over any aspect of the operation, maintenance, service, repair or improvement of the East Capitol Gardens Shared Stormwater Management Facility that cannot be first resolved among the Owners themselves (with or without the facilitation of mediation, at their collective discretion), a third-party arbitrator shall be appointed to resolve the dispute. The decision of the arbitrator shall be final and binding on all Owners. In selecting a third-party arbitrator, each Lot shall be entitled to one vote (regardless of the number of owners of any particular Lot), and the nominee receiving a majority of votes shall be the arbitrator. All Lots shall share equally in the cost of any arbitration.

3.4 In the event any term, condition, covenant or restriction of this Declaration requires enforcement against any party, a judicial action may be initiated upon the approval of a majority of the Owners. The party commencing such action or lawsuit shall be entitled to reasonable attorneys' fees and costs, if the party prevails.

3.5 Each Owner shall be notified by mail or in person of any action relating to the East Capitol Gardens Shared Stormwater Management Facility. If an address of an Owner is not known, a certified notice may be mailed to the address to which the Owner's property tax bills are sent and shall be deemed to be received three (3) days following its mailing.

ARTICLE 4 GENERAL PROVISIONS

4.1 Amendments. This Declaration may be amended, supplemented or modified only upon the consent of all Owners. No such amendment, supplement, or modification shall be effective until a written instrument setting forth the terms thereof has been executed by the parties by whom approval is required as set forth above and recorded in the official records of the Recorder of Salt Lake County, Utah. Notwithstanding the above, no amendment, supplementation or modification shall be made to this Declaration unless it has been first reviewed and approved by the Engineering Department of Salt Lake City, as evidenced by a letter to all the Owners.

4.2 Partial Invalidity. Any term or provision of this Declaration which is invalid or unenforceable in any jurisdiction will, for that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Declaration or affecting the validity or enforceability of any of the terms or

provisions of this Declaration in any other jurisdiction. If any provision of this Declaration is so broad that it is unenforceable, the provision will be interpreted to be only so broad as is enforceable.

4.3 Third Party Beneficiary. This Declaration is an agreement solely for the benefit of the Owners (and their permitted successors and/or assigns). No other person shall have any rights hereunder nor shall any other person be entitled to rely on the terms, covenants, and provisions contained herein, other than the City of Salt Lake.

4.4 Successors and Assigns. This Declaration and all its covenants, terms, and provisions shall be binding on and inure to the benefit of each Owner and his, her or its successors and assigns.

4.5 Further Assurances. Each Owner agrees to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Declaration, so long as any of the foregoing do not materially increase any Owner's obligations hereunder or materially decrease any Owner's rights hereunder.

4.6 Governing Law. This Declaration shall be governed and construed in accordance with the law of the State of Utah, without giving effect to any choice or conflict of law provision or rule (whether of the State or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Utah.

IN WITNESS WHEREOF, the Declarant hereto has executed this Declaration as of the date set out above.

DECLARANT:

MAKADAMS LLC, a Utah limited liability company

By: 

Name: JEFFREY B ADAMS

Its: MANAGER

STATE OF UTAH)

ss)

COUNTY OF SALT LAKE)

On the 16 day of Feb, 2022, personally appeared before me
Jeffrey E. Adams who, being by me duly sworn, did say that he, ~~Adams~~
it is the managing member MAKADAMS LLC, a Utah limited liability company, and
acknowledged to me that the above and foregoing instrument was signed on behalf of said
organization as such member, and said managing member duly acknowledged to me that said
organization executed the same.



Notary

STATE OF UTAH)

SS)

COUNTY OF SALT LAKE)

On the 16 day of Feb, 2022, personally appeared before me
Jeffrey E. Adams who, being by me duly sworn, did say that he, she or
it is the managing member MAKADAMS LLC, a Utah limited liability company, and
acknowledged to me that the above and foregoing instrument was signed on behalf of said
organization as such member, and said managing member duly acknowledged to me that said
organization executed the same.

Nathan D Francis

Notary

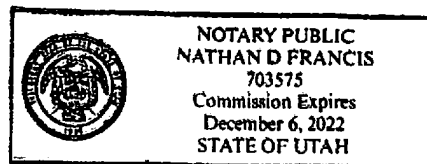


EXHIBIT "A"

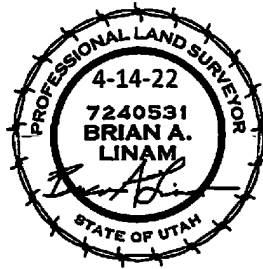
The East Capitol Gardens Subdivision Plat

EXHIBIT "B"

Stormwater Management Facility Easements

CENTER STORMWATER MANAGEMENT FACILITY EASEMENT

BEGINNING AT A POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE, SAID POINT BEING NORTH 89°59'13" EAST 193.00 FEET ALONG THE MONUMENT LINE AND NORTH 00°00'47" WEST 10.00 FEET AND NORTH 89°59'13" EAST 72.33 FEET FROM THE STREET MONUMENT IN THE INTERSECTION OF CLINTON AVE. AND CORTEZ ST. AND RUNNING THENCE NORTH 00°00'47" WEST 158.00 FEET TO A POINT ON THE NORTHERLY PROPERTY LINE; THENCE NORTH 89°59'13" EAST 20.00 FEET; THENCE SOUTH 00°00'47" EAST 158.00 FEET TO A POINT ON SAID NORTHERLY RIGHT OF WAY LINE; THENCE SOUTH 89°59'13" WEST 20.00 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE TO THE POINT OF BEGINNING.



EAST/WEST STORMWATER MANAGEMENT FACILITY EASEMENT

BEGINNING AT A POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE OF CLINTON AVENUE AND THE EASTERLY RIGHT OF WAY LINE OF EAST CAPITOL STREET, SAID POINT BEING NORTH 89°59'13" EAST 193.00 FEET ALONG THE MONUMENT LINE AND NORTH 00°00'47" WEST 10.00 FEET FROM THE STREET MONUMENT IN THE INTERSECTION OF CLINTON AVE. AND CORTEZ ST. AND RUNNING THENCE NORTH 00°00'47" WEST 23.00 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE; THENCE SOUTH 89°59'13" EAST 12.01 FEET; THENCE SOUTH 26°35'28" EAST 20.12 FEET; THENCE NORTH 89°59'13" EAST 121.42 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF EAST CAPITOL BLVD.; THENCE SOUTH 25°59'13" WEST 5.56 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE SOUTH 89°59'13" WEST 140.00 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE TO THE POINT OF BEGINNING.

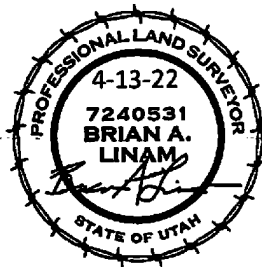


EXHIBIT "C"

The East Capitol Gardens Legal Description

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN. SAID TRACT OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT A POINT 23.00 FEET SOUTH 00°00'47" EAST FROM THE SOUTHWEST CORNER OF LOT 1, BLOCK 19, PLAT J, SALT LAKE CITY SURVEY, SAID POINT ALSO BEING NORTH 89°59'13" EAST 193.00 FEET, AND NORTH 00°00'47" WEST 10.00 FEET FROM THE STREET MONUMENT LOCATED AT THE INTERSECTION OF CLINTON AVENUE AND CORTEZ STREET, AND RUNNING THENCE NORTH 00°00'47" WEST 158.00 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF EAST CAPITOL STREET; THENCE NORTH 89°59'13" EAST 120.00 FEET; THENCE NORTH 00°00'47" WEST 15.00 FEET; THENCE NORTH 89°59'13" EAST 45.93 FEET TO THE WESTERLY RIGHT OF WAY LINE OF EAST CAPITOL BOULEVARD; THENCE SOUTH 01°32'07" EAST 68.88 FEET; THENCE SOUTHEASTERLY 43.57 FEET ALONG THE ARC OF A 1472.32 FOOT RADUIS CURVE TO THE LEFT, CHORD BEARS SOUTH 02°22'59" EAST 43.57 FEET; THENCE SOUTH 25°59'13" WEST 67.44 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF CLINTON AVENUE; THENCE SOUTH 89°59'13" WEST 140.00 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING.

CONTAINS 26,407 SQ. FT. OR 0.606 ACRES, MORE OR LESS

6 LOTS