

After recording, please mail to:

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

14054177 B: 11391 P: 7056 Total Pages: 11
12/19/2022 10:17 AM By: adavis 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): 2622253001 & 2622253002

Property/Subdivision: South Jordan Parkway Phase 2

Project Name: South Jordan Parkway Phase 2

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 VP Daybreak Devco LLC, a Delaware limited liability company ("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]

THE OWNER(S) ACKNOWLEDGMENT

Signature: _____
Name: _____
Title: _____
Date: _____

State of Utah)
 :ss
County of Salt Lake)

On this _____ day of _____, 20_____, personally appeared before me _____
_____, 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.

(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: LHM Real Estate
By: [Signature]
Name: Cameron Jackson
Title: SVP Operations
Date: 10/19/22

Representative Capacity Acknowledgement

State of Utah)

County of Salt Lake)

On this 19 day of October, 2022, personally appeared before me, Cameron Jackson (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, SVP of Operations (title of office) of, Lamy H Miller Real Estate (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, Cameron Jackson (name of document signer(s)) acknowledged to me that said legal entity and owner executed the same.

Witness my hand and official seal.

[Signature]
(Notary signature)

(notary seal)

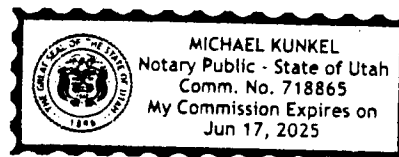


EXHIBIT A

(Property Legal Description)

Less and Except Parcel VV (26-22-253-001)

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 2875.031 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3616.575 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot Z101 South 53°07'08" West 121.984 feet to a point on a 1519.500 foot radius non tangent curve to the right, (radius bears North 34°05'36" East, Chord: North 52°57'12" West 156.574 feet); thence along the arc of said curve 156.643 feet through a central angle of 05°54'24"; thence North 50°00'00" West 173.109 feet; thence North 30°00'00" East 37.807 feet to a point on a 740.500 foot radius non tangent curve to the left, (radius bears North 31°26'54" East, Chord: South 60°34'26" East 52.263 feet); thence along the arc of said curve 52.274 feet through a central angle of 04°02'41"; thence South 62°35'47" East 129.796 feet; thence South 69°41'12" East 81.013 feet; thence South 62°35'47" East 112.099 feet to the point of beginning.

Property contains 0.615 acres, 26771 square feet.

Less and Except Parcel WW (26-22-253-002)

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 2777.458 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3543.254 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot Z101 North 53°07'08" East 121.984 feet; thence South 62°35'47" East 463.598 feet to a point on a 730.500 foot radius tangent curve to the left, (radius bears North 27°24'13" East, Chord: South 64°20'51" East 44.648 feet); thence along the arc of said curve 44.655 feet through a central angle of 03°30'09"; thence South 24°35'09" West 71.418 feet to a point on a 1519.500 foot radius non tangent curve to the right, (radius bears North 12°37'23" East, Chord: North 66°38'30" West 566.075 feet); thence along the arc of said curve 569.401 feet through a central angle of 21°28'13" to the point of beginning.

Property contains 1.328 acres.

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

CONTACT INFORMATION

Name (Main Contact): VP Daybreak Devco LLC Phone: _____
Address: 9350 South 150 East, Suite 900
City: Sandy State: UT Zip: 84070
Contact Person: John B. Warnick Phone: (303) 335-8023
Contact Email: john.warnick@lhm.com

SECONDARY CONTACT INFORMATION (ASSIGNED/ OR DEPARTMENT)

Name (Main Contact): _____ Phone: _____
Address: _____
City: _____ State: _____ Zip: _____
Contact Person: _____ Phone: _____
Contact Email: _____