

AGREEMENT FOR TEMPORARY STORM DRAIN

Tax ID Number: 080650038

THIS AGREEMENT is made and entered into this 5 day of February, 2016, by and between RREF II-JFH Shepard JV, LLC (Developer) of 1148 West Legacy Crossing Boulevard, Suite 400, Centerville, Utah, Lodder Investments, LLC (Lodder) of 1988 South Shepard Lane, Kaysville, Utah and Kaysville City (City) of 23 East Center Street, Kaysville, Utah. Said entities are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

1. RREF II-JFH Shepard JV, LLC (Developer) is in the process of developing a Subdivision known as Parkwood (Subdivision) within Kaysville City (City).
2. The U.S. Army Corps of Engineers (Corps) has determined that there are Wetlands within the Subdivision.
3. The Developer's plans for the Subdivision show storm drain facilities (Storm Drain) within the Wetlands area.
4. The Developer has applied for and received approval from the U.S. Army Corps of Engineers (Corps) for a Nationwide Permit to impact the wetlands in phase 1 of the subdivision.
5. In the spring of 2016 the Developer will apply for the same Nationwide Permit for additional phases of the subdivision to further impact the Wetlands.
6. Lodder Investments, LLC (Lodder) owns real property (the Lodder Property) adjacent to the Subdivision.
7. Lodder has previously installed a storm drain pipe in the Lodder Property for future development of said property.
8. The Lodder storm drain pipe is capable of handling the storm water from Phase 1 of the Subdivision on a temporary basis.
9. The City agrees to accept the Developer's use of the Lodder storm drain pipe for Phase 1 of the Subdivision as shown on Exhibit A, as compliance with City storm drain requirements on a temporary basis until the Developer receives approval from the Corps and builds permanent storm drain facilities in the Wetlands portion of phase 2 of the Subdivision.
10. The Parties now desire to enter into an agreement to provide for temporary storm drain facilities in accordance with the foregoing Recitals.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth the Parties hereby agree as follows:

AGREEMENT

SECTION ONE: INCORPORATION OF RECITALS

All of the above and foregoing Recitals are incorporated into and made a part of this Agreement.

SECTION TWO: USE OF LODDER STORM DRAIN

The Developer, the City and Lodder agree that the Developer and the City may use the existing Lodder storm drain pipeline for the temporary disposition of storm drain water from Phase 1 of the Subdivision. Such use shall continue until such time as the Developer receives a Nationwide Permit from the Corps to construct permanent storm drain facilities on the area currently designated as Wetlands. Such use shall be discontinued when permanent storm drain facilities are installed. Said permanent facilities will be installed with phase 2 of the subdivision and not later than December 31, 2018. If the facilities are not installed by said date, Developer will pay Lodder \$10,000 on January 1, 2019 and on January 1 of each subsequent year that the Lodder storm drain is still required by the Developer.

Construction of the future storm drain facilities by Developer must cross an existing Lodder culinary water line and must be done so without damage and must be installed with thirty (30) days advanced written notice to Lodder. The Developer and the City shall coordinate such construction and development activities with Lodder. Lodder agrees that the City shall have unrestricted access to the storm drain at all times for maintenance purposes.

SECTION THREE: CONSIDERATION FOR USE OF LODDER PIPELINE

Developer will perform all construction at its own cost and expense, and the Developer will pay Lodder a one-time payment in the sum of \$10,000.00 for temporary use of the Lodder pipeline, such payment to be made within ten days of the execution of this agreement.

SECTION FOUR: INSTALLATION OF FENCE

The Developer will install, at Developer's cost and expense, a privacy fence on the Southwest portion of Developer's property as shown on Exhibit "B." Said fence will be installed at the beginning of construction of phase 2.

SECTION FIVE: **ACCEPTANCE BY CITY**

All construction of the temporary storm drain facilities must meet the requirements of the City. After construction is accepted the City will maintain the pipe facilities connecting with the Lodder pipeline until the permanent storm drain facility is installed and accepted by the City to serve Phase 1 of the Subdivision.

SECTION SIX: **ATTORNEY'S FEES**

In the event that any Party hereto shall be in default or breach of this Agreement, said Party shall be liable to pay all reasonable attorney's fees, court costs and other related costs and expenses incurred by the non-defaulting or non-breaching Party in prosecuting its rights hereunder.

SECTION SEVEN: **FURTHER INSTRUMENTS**

The Parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

SECTION EIGHT: **WAIVER**

A waiver by any Party of any provision hereof, whether in writing or by course of conduct or otherwise, shall be valid only in the instance for which it is given, and shall not be deemed a continuing waiver of said provision, nor shall it be construed as a waiver of any other provision hereof.

SECTION NINE: **GOVERNING LAW**

This Agreement, and all matters relating hereto, including any matter or dispute arising out of the Agreement, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and the Parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.

SECTION TEN: **AMENDMENTS**

This Agreement may be amended at any time upon agreement of the Parties hereto, which amendment(s) must be reduced to writing and signed by all Parties in order to become effective.

SECTION ELEVEN: BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, personal representatives, successors and assigns.

SECTION TWELVE: SEPARATE COUNTERPARTS

This Agreement may be executed in several identical counterparts, each one of which shall be considered an original and all of which when taken together shall constitute but one instrument.

SECTION THIRTEEN: INCORPORATION OF EXHIBITS

All exhibits attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.


SECTION FOURTEEN: ENTIRE AGREEMENT

This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties.

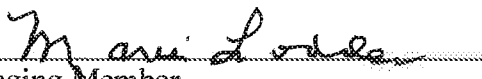
IN WITNESS WHEREOF, the Parties have hereto set their hands on the day and year first above written.

RREF II-JFH SHEPARD JV, LLC (Developer)

By: JACK FISHER DEVELOPMENT OF NORTHERN UTAH, LLC
Its: Project Manager and Authorized Agent

By: 
Name: Chad Bessinger
Its: Project Manager

LODDER INVESTMENTS, LLC

By: 
Managing Member

KAYSVILLE CITY (City)

By: 

STEVE A. HIATT

Mayor

ATTEST:

By: 

LINDA ROSS

City Recorder - Deputy

STATE OF UTAH)

SS.

COUNTY OF DAVIS)



On the 4th day of February, 2016, personally appeared before me Chad Bessinger, the signer of the foregoing instrument who duly acknowledged to me that he executed the same, as Project Manager, for and on behalf of Jack Fisher Development of Northern Utah, LLC, Project Manager and Authorized Agent of RREF II-JFH Shepard JV, LLC.


NOTARY PUBLIC

Residing at: 06/30/2018 Webb County, Utah

My Commission Expires: 06/30/2018

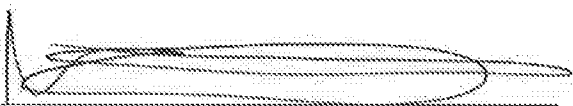
STATE OF UTAH)

SS.

COUNTY OF DAVIS)



On the 4th day of February, 2016, personally appeared before me Marie Lodder, the signer of the foregoing instrument who duly acknowledged to me that he executed the same for and on behalf of Lodder Investments, LLC.

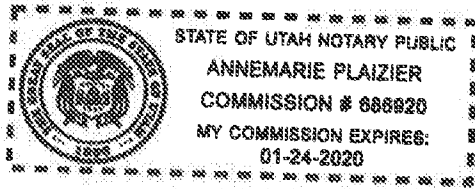

NOTARY PUBLIC

Residing at: Webb County, Utah

My Commission Expires: 06/30/2018

COUNTY OF DAVIS)

On the 16 day of February, 2016, personally appeared before me Steve A. Hiatt, and Dean Storey, who being by me duly sworn did say, that he, the said Steve A. Hiatt, is the Mayor of Kaysville City, Davis County, State of Utah and that he, the said Dean Storey, is the Deputy City Recorder of Kaysville City, and that the within and foregoing instrument was signed on behalf of the said Kaysville City and said Steve A. Hiatt, and Dean Storey, each duly acknowledged to me that the said Kaysville City executed the same and that the seal affixed is the seal of the said Kaysville City.



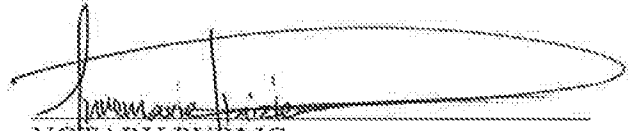

NOTARY PUBLIC
Residing at: Davis Co.
My Commission Expires: 1/24/20

Exhibit A

OFFSITE DRAINAGE EASEMENT

A 20' drainage easement located in the NE1/4 of Section 15, Township 3 North, Range 1 West, Salt Lake Base & Meridian, more particularly described as follows:

Beginning at a point located S89°58'06"E along the 1/4 Section line 911.12 feet from the Center 1/4 Corner of Section 15, Township 3 North, Range 1 West, Salt Lake Base and Meridian; thence N0°15'47"E 510.05 feet; thence S89°44'13"E 20.00 feet to the northwest corner of HUNTERS CREEK SUBDIVISION No. 2 Subdivision, according to the Official Plat thereof on file in the Office of the Davis County Recorder; thence S0°15'47"W (plat: S0°16'01"W) along said Plat 509.96 feet to the 1/4 Section line; thence N89°58'06"W along the 1/4 Section line 20.00 feet to the point of beginning.

Contains: 10,200± s.f.

Exhibit B

