

RECORDING REQUESTED BY

NAME: EVERGREEN-12TH & WASHINGTON, L.L.C.



W3181069

WHEN RECORDED MAIL TO:

NAME: EVERGREEN-12TH & WASHINGTON, L.L.C.

ADDRESS: 2390 E. CAMELBACK ROAD, SUITE 410

CITY/STATE/ZIP: PHOENIX, AZ 85016

E# 3181069 PG 1 OF 7
Leann H. Kilts, WEBER COUNTY RECORDER
02-Sep-21 0220 PM FEE \$40.00 DEP TN
REC FOR: FIRST AMERICAN TITLE INSURANCE COI
ELECTRONICALLY RECORDED

(DOCUMENT WILL ONLY BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE)

(SPACE ABOVE FOR RECORDER'S USE)

SINGLE-PARCEL DRAINAGE AGREEMENT

(DOCUMENT TITLE)

COURTESY RECORDING
NO TITLE LIABILITY

SINGLE-PARCEL DRAINAGE AGREEMENT
Between
UTAH DEPARTMENT OF TRANSPORTATION
And
EVERGREEN-12TH & WASHINGTON, L.L.C.

County Tax ID No. 86-3833745

This Single-Parcel Drainage Agreement ("Agreement"), by and between **Utah Department of Transportation** ("Department") and **EVERGREEN-12TH & WASHINGTON, L.L.C.** ("Permittee") describes the terms and conditions of offsite drainage connections in the Department Right of Way.

RECITALS

WHEREAS, the Permittee owns the property described in Exhibits; and

WHEREAS, the Permittee, its successors and assigns, desires to construct drainage facilities in accordance with the plans permitted by the Department, to collect and convey stormwater from their property and discharge into the Department's drainage facilities, more particularly shown in Exhibits; and

WHEREAS, the Permittee shall be responsible to comply with the required stormwater permits, applicable laws and regulations.

AGREEMENT

The Parties agree to the following:

(1) DRAINAGE CONNECTION IMPACT

- a) The Department may perform inspection of Permittee's drainage facility to monitor compliance with the Permit and with state and federal statutes, regulations, and rules. Permittee grants the Department access to the Permittee's property for inspection or to perform any repairs to prevent damage to the Department's Right of Way. The Department's inspection does not relieve the Permittee of its responsibilities. The Permittee is responsible for the Department's inspection costs.
- b) Permittee shall comply with applicable stormwater permits, laws, regulations, and rules.
- c) The Permittee is responsible for repairing and restoring any portion of the Department Right of Way and drainage features located therein that may be damaged as a result of making the drainage connection or as the result of any subsequent drainage originating from the Permittee's property. A bonded contractor must apply for the required permit to install drainage facilities in the Department Right of Way prior to the commencement of any such work.
- d) The Permittee must not increase the stormwater discharge into the Department's drainage facilities without the written permission of the Department.
- e) The Permittee is responsible for all liability resulting from the discharge of pollutants into the Department's drainage facility from its property or drainage facility, including the failure to comply with applicable stormwater permits, laws, regulations and rules.

- f) The Permittee accepts all risks associated with the connection to the Department's drainage facility.

(2) LONG TERM OPERATION AND MAINTENANCE

- a) The Permittee's drainage facilities shall be maintained and operational to prevent or reduce the discharge of pollutants.
- b) The Department may notify the Permittee of any maintenance requirements if the Permittee fails to maintain the drainage facilities. The Department reserves the right, without relieving the Permittee of its obligations, to reconstruct or make repairs to the drainage connection as necessary. The Permittee must reimburse the Department for its cost if the Permittee fails to comply with the Department's written notification.
- c) The Permittee's drainage facilities shall be maintained without access from any interstate highway or ramp.

(3) FUTURE IMPACTS

- a) The Department has the right to change its drainage facilities for any future transportation project. If the Department's drainage facilities are reconstructed or modified, the Department reserves the right to hold the Permittee responsible for the cost to reconnect to the Department's drainage facilities. The Department is not responsible for any costs the Permittee incurs due to the drainage facilities being reconstructed or modified.

(4) LIABILITY

- a) Pursuant to R930-7-6(2)(b), the Permittee is required to guarantee satisfactory performance under this Permit.
- b) The Department may proceed against Permittee to recover all expenses incurred by the Department, its employees, or contractors in repairing the sections of roadway damaged by the Permittee or its drainage facility, including the failure to restore the Right of Way to Department standards.
- c) The Permittee will be liable for all costs the Department incurs under this agreement.
- d) The Permittee waives any claims against the Department for damages resulting from any back-up or flow into the Permittee's drainage facilities or property.
- e) The Permittee will indemnify, defend, and hold harmless the Department, its employees, and the State of Utah for any and all damages, accidents, causalities, occurrences, or claims which might arise or be asserted against the Department from failure of the Permittee to comply with its obligations under this agreement relating to the drainage connection.

(5) REMOVAL OF CONNECTION

- a) Non-compliance with this Agreement may result in the Department removing the drainage

connection and restoring the highway and Right of Way at the sole expense of the Permittee.

- b) The Department will notify the Permittee in writing prior to any removal, setting forth the violations, and will provide the Permittee a reasonable time to correct the violations to the satisfaction of the Department. The Department may order the removal of any drainage connections subject to this Agreement if the violations are not corrected.

(6) SUCCESSORS AND ASSIGNS

- a) All covenants, obligations and agreements will be binding upon the parties, their successors and assigns and run with the land as described in Exhibit A until the drainage connection is removed from the Department Right of Way.

(7) MISCELLANEOUS

- a) Each party agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purpose of the Agreement at the request of the other party.
- b) This Agreement does not create any type of agency relationship, joint venture, or partnership between the Department and Permittee.
- c) The failure of either party to insist upon strict compliance of any of the terms and conditions, or failure or delay by either party to exercise any rights or remedies provided in this Agreement, or by law, will not release either party from any obligations arising under this Agreement.
- d) This Agreement shall be deemed to be made under and shall be governed by the laws of the State of Utah in all respects. Each person signing this Agreement warrants that the person has full legal capacity, power and authority to execute this Agreement for and on behalf of the respective party and to bind such party.
- e) If any portion of this Agreement is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid or unenforceable provision had never been included.
- f) The effective date of this Agreement is the date signed by the last party.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers.

Evergreen-12th & WASHINGTON, L.L.C.,
an Arizona limited liability company

By: Evergreen Development Company-2021,
L.L.C.,
an Arizona limited liability company
Its: Manager

By: Evergreen Devco, Inc., a California
corporation
Its: Manager

Attest

Dana Dragon

[Signature]

Title: Dana Dragon

Title: PRESIDENT

Date: 8/5/2021

Date: 8-5-21

(IMPRESS SEAL)
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Recommended for Approval

UDOT

[Signature]
UDOT Right Way Coordinator
Title: Permit's Officer

[Signature]
Title: Region Director

Date: 8-18-2021

Date: 8-18-21

UDOT Comptroller Office

Kristi Barney
Title: Contract Administrator

Date: 08/19/2021

Acknowledgment

State of Utah)

County of Weber^s)

On this 18 day of August in the year 2021, before me, Cheryl Marz a notary
date month year notary public name

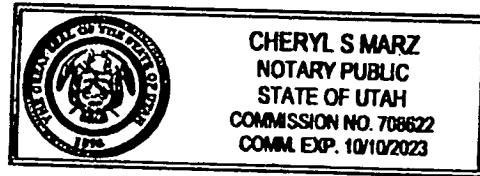
public, personally appeared Rodger J Genereux proved on the basis of satisfactory
name of document signer

evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged

(he/she/they) executed the same.

Witness my hand and official seal.

Cheryl S Marz
(notary signature)



(seal)

Exhibits

Future Lot 1, EDI 12th Street Subdivision

Beginning at a point on the north right of way line of 12th Street which is 720.50 feet North 89°09'45" West along the monument line and 80.56 feet North 0°50'15" East from the Ogden City Survey Monument in the intersection of Washington Avenue and said 12th Street; running thence North 0°50'15" East 337.84 feet; thence South 89°09'45" East 133.33 feet; thence South 0°50'15" West 293.36 feet; thence South 5°50'15" West 27.93 feet; thence South 0°38'06" West 16.22 feet to said north right of way line; thence North 89°21'18" West 130.96 feet along said line to the point of beginning.

Contains: 44,942 sq. ft. or 1.032 acres

Future Lot 2, EDI 12th Street Subdivision

Beginning at a point on the north right of way line of 12th Street which is 720.50 feet North 89°09'45" West along the monument line and 80.56 feet North 0°50'15" East to said north right of way line and 130.96 feet South 89°21'18" East along said line from the Ogden City Survey Monument in the intersection of Washington Avenue and said 12th Street; running thence North 0°38'06" East 16.22 feet; thence North 5°50'15" East 27.93 feet; thence North 0°50'15" East 293.36 feet; thence South 89°09'45" East 116.67 feet; thence South 0°50'15" West 337.00 feet to said north right of way line; thence North 89°21'18" West 119.04 feet along said line to the point of beginning.

Contains: 39,412 sq. ft. or 0.905 acres.