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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
05/13/2021 03:35 PM
FEE \$0.00 Pgs: 12
DEP RT REC'D FOR BOUNTIFUL CITY

When recorded, mail to:

Bountiful City Engineer
790 S 100 E
Bountiful, Utah 84010

Affects Parcel No(s): 03-290-0001
03 290 0029

**BOUNTIFUL CITY
STORM WATER FACILITIES
MAINTENANCE AGREEMENT**

This Storm Water Facilities Maintenance Agreement ("Agreement") is made and entered into this 7th day of DECEMBER, 20 20 by and between Bountiful City, a Utah municipal corporation ("the City"), and 5TH & ORCHARD TOWNHOMES, LLC ("Owner").

RECITALS

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City, as set forth in Title 6 of the Bountiful City Code ("the Code"); and

WHEREAS, 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"); and

WHEREAS, 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; and

WHEREAS, 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 Owner's expense a storm and surface water management facility or improvements ("Storm Water Facilities"); and

WHEREAS, the Storm Water Facilities are more particularly described and shown in the final site plan or subdivision approved by the City for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with the Bountiful City Engineer and are hereby incorporated herein by this reference ("Development Plan"); and

WHEREAS, 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, Owner is required to enter into this Agreement addressing the maintenance requirements for the Storm Water Facilities and control measures installed on the Property.

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the City's approval of the Development Plan, and the mutual covenants contained herein, the parties agree as follows:

1. Owner's Obligations to Construct, Maintain and Inspect Storm Water Facilities. The Owner shall, at its sole cost and expense:

- (a) construct the Storm Water Facilities in strict accordance with the plans and specifications identified in the Development Plan, and any amendments thereto which have been approved by the City, and in compliance with applicable City, State and Federal law.
- (b) adequately maintain the Storm Water Facilities. Owner's maintenance obligations shall include all pipes and channel built to convey storm water, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance, for purposes of this Agreement, is defined as good working condition so that the Storm Water Facilities are performing their design functions. The Owner shall, at its sole cost and expense, perform all work necessary to keep the Storm Water Facilities in good working condition. In the event that a maintenance schedule is set forth in the Development Plan, such maintenance schedule shall be followed.
- (c) inspect the Storm Water 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 Storm Water Facilities. The annual inspection shall cover all aspects of the Storm Water 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 June 30th of each year and shall be on forms acceptable to the City.

2. 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 Storm Water Facilities whenever deemed necessary by the City. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspection shall be to determine and ensure that the Storm Water Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the City, State and Federal law and the Development Plan.

3. Notice of Deficiencies. If the City finds that the Storm Water Facilities contain any defects or are not being maintained adequately, the City shall send Owner written notice of the defects or deficiencies and provide Owner with a reasonable time to cure such defects or deficiencies. Such notice shall be hand-delivered to the Owner or sent certified mail to the Owner.

4. Owner to Make Repairs. The Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the Storm Water Facilities as may be determined as reasonably necessary by the City within the required cure period to ensure that the Storm Water Facilities are adequately maintained and continue to operate as designed and approved.

5. City's Corrective Action Authority. In the event the Owner fails to adequately maintain the Storm Water Facilities in good working condition acceptable to the City, after due notice of deficiencies as provided herein, the City may enter upon the Property and take whatever steps necessary to correct deficiencies and to 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 Storm Water 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.

6. Reimbursement of Costs. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City. 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. Owner shall also be liable for any collection costs, including attorneys' fees and court costs, incurred by the City in collection of delinquent payments.

7. Successor and Assigns. This Agreement shall be recorded in the Davis County Recorder's Office. 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 successors and assigns, and shall bind all present and subsequent owners of the Property described herein.

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 Covenant 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 Davis County, Utah.

12. Indemnification. This Agreement imposes no liability of any kind whatsoever on the City, and the Owner agrees to hold the City harmless from any liability in the event the Storm Water Facilities fail to operate properly. The Owner shall indemnify and hold the City harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against the City from the construction, presence, existence, or maintenance of the Storm Water Facilities.

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 Davis County Recorder's Office.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Bountiful City:

By: Wood Channing

Its: City Engineer

Owner:

By: [Signature]

Print Name: PATRICK J SCOTT

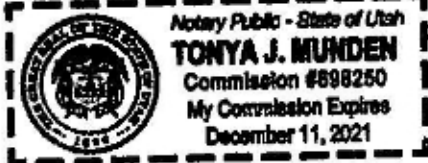
Title: President of Brighton Development Utah, LLC

Manager

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the 10th day of May, 2021, personally appeared before me Lloyd Cheney, who being duly sworn, did say that he/she is the City Engineer of **BOUNTIFUL CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in his/her capacity as land use authority on behalf of the City for approval of Storm Water Facilities Maintenance Agreements.



Tonya J. Munden
Notary Public

My Commission Expires:
12-11-21

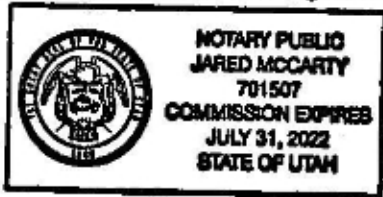
Residing at:
795 S. Main St. Btfl, UT

OWNER ACKNOWLEDGMENT

Note: If Owner is a corporation, limited liability company, partnership, trust or other legal entity, rather than an individual, a separate applicable acknowledgement must be provided.

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the 7th day of DECEMBER, 2020, personally appeared before me PATRICK J. SCOTT, who being duly sworn, did say that he/she is the legal property owner of record of the property subject to this Maintenance Agreement and that he/she has executed this Agreement with full authority to do so.



J. McCarty
Notary Public

My Commission Expires:
July 31, 2022

Residing at:
45 E CENTER ST STE 103 NSL UT 84057

Exhibit "A"
Property Legal Description

BOUNDARY DESCRIPTION

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF 500 SOUTH STREET AND THE WEST LINE OF ORCHARD DRIVE (400 EAST STREET), SAID POINT BEING NORTH 89°38'33" EAST 67.96 FEET ALONG THE SECTION LINE TO THE CENTER LINE OF ORCHARD DRIVE AND SOUTH 00°11'23" EAST 516.71 FEET ALONG SAID CENTER LINE TO THE MONUMENT AT THE INTERSECTION OF SAID 500 SOUTH STREET AND ORCHARD DRIVE AND SOUTH 89°44'04" WEST 33.00 FEET ALONG THE CENTER LINE OF 500 SOUTH STREET AND SOUTH 00°11'26" EAST 33.00 FEET FROM THE NORTHWEST CORNER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH, SAID POINT BEING EAST 49.50 FEET FROM THE NORTHEAST CORNER OF BLOCK 39, NORTH MILL CREEK PLAT, BOUNTIFUL TOWNSITE SURVEY, BY RECORD, AND RUNNING THENCE SOUTH 00°11'26" EAST 315.52 FEET (SOUTH 313.50 FEET, BY RECORD) ALONG THE WEST LINE OF ORCHARD DRIVE; THENCE NORTH 89°56'15" WEST 299.41 FEET (NORTH 89°34' WEST 286.40 FEET, BY RECORD) TO A FENCE LINE; THENCE NORTH 01°04'00" WEST 174.52 FEET (NORTH 168.48 FEET, BY RECORD) ALONG SAID FENCE LINE; THENCE NORTH 01°32'04" EAST 139.36 FEET (NORTH 01°48' EAST 143.85 FEET, BY RECORD) TO THE SOUTH LINE OF 500 SOUTH STREET; THENCE NORTH 89°44'04" EAST 297.88 FEET (EAST 305.20 FEET, BY RECORD) ALONG SAID SOUTH LINE TO THE WEST LINE OF ORCHARD DRIVE AND TO THE POINT OF BEGINNING.

WHOLE PARCEL CONTAINS 2.170 ACRES.

Exhibit "B"
Maintenance Schedule for Storm Water Facilities

Underground Basin Inspection Form

Location: _____

Inspector(s): _____ Date: _____

		OK	Not OK	General Notes, Corrective Action, and Follow-Up
Inlet	Inlet Structure Stable, Free of Excess Accumulation, and Free of Erosion			
	Ground Above Free of Settlement; No Indication of Undermining			
Basin	Inspection Port Stable; At Grade			
	Sediment Free of Excessive Accumulation (Less than 3")			
	Debris Free of Excessive Accumulation			
Outlet	Outlet from Basin Stable, Free of Excess Material Accumulation, and Free of Erosion			
	Orifice/Weir Functional; Clear of Debris			
General	Access to Facility			
	Water Quality Impacts Free of Erosion Problems, Chronic Maintenance Problems, Excessive Trash, Evidence of Illicit Discharge			
	Other (specify):			

Comments:

Certification

I certify that the attached inspection report for stormwater facilities was prepared by me or under my supervision and the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. The stormwater facilities are (check one)

- functioning properly.*
- not functioning properly.*

I am aware that there are significant penalties for submitting false information.

Signature

Date (mm/dd/yyyy)

Name

