

When recorded return to:

Summit County Engineering
PO 128 - 60 N. Main
Coalville, Utah 84017

Recorders Label

Affects Parcel No(s): _____

LONG-TERM STORMWATER MANAGEMENT AGREEMENT

This Long-Term Stormwater Management Agreement ("**Agreement**") is made and entered into this _____ day of _____, 20___, (the "**Effective Date**") by and between Summit County, a political subdivision of the State of Utah (the "**County**"), and _____, whose mailing address is _____ ("**Owner**"). Individually, the County and Owner are individually referred to herein as a "Party", and collectively as the "Parties."

RECITALS

WHEREAS, the County is authorized and required to regulate and control the disposition of storm and surface waters within the MS4, as set forth in Title 9, Chapter 3 of the *Summit County Code*, as amended (the "**County Regulations**"), adopted pursuant to the Utah Water Quality Act, as set forth in *Utah Code Ann.* §§ 19-5-101, *et seq.*, as amended (the "**Act**"); and,

WHEREAS, the Owner hereby represents and acknowledges that it is the owner in fee simple title 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 is required to build and maintain at Owner's sole expense certain improvements; namely, a storm and surface water management facility (the "**Stormwater Facilities**"); and,

WHEREAS, the Stormwater Facilities are more particularly described and shown in the final site plan or subdivision approved for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with the

Summit County Engineer (the “**County Engineer**”) and are hereby incorporated herein by this reference (the “**Development Plan**”); and,

WHEREAS, Owner shall file with the County Engineer (a) a summary description of all Stormwater Facilities, including all details and all appurtenances draining to and affecting the Stormwater Facilities, (b) the standards for the operation and routine maintenance procedures for the Stormwater Facilities, and (c) all control measures installed on the Property (collectively, the “**Long-Term Stormwater Management Plan**”), as more particularly described in Exhibit “B”, attached hereto and incorporated herein by this reference; and,

WHEREAS, as a condition of development, and as required as part of the County’s Small MS4 UPDES General Permit from the State of Utah, Owner is required to enter into this Agreement which approves the Long-Term Stormwater Management Plan and provides for its enforcement.

AGREEMENT

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the County’s approval of the Long-Term Stormwater Management Plan, and the mutual covenants contained herein, the Parties agree as follows:

1. **Recitals**. The foregoing recitals, including Exhibits A and B, are incorporated herein by this reference.
2. **Construction of Stormwater Facilities**. The Owner shall, at its sole cost and expense, construct the Stormwater Facilities in accordance with the Development Plans and the Long-Term Stormwater Management Plan, and any amendments thereto which have been approved by the County Engineer. The Owner shall file a completion bond with the County Engineer in an amount set by the County Engineer within thirty (30) calendar days following the Effective Date (the “**Completion Bond**”). The Completion Bond may be cash escrow, a letter of credit from an FDIC insured financial institution, or a corporate surety bond. The Completion Bond shall be valid until one year after all work shown on the Development Plan and Long-Term Stormwater Management Plan is completed and inspected by the County (the “**Warranty Period**”). The Completion Bond shall be released by the County Engineer after the conclusion of the Warranty Period. Such Completion Bond may be added to a Development Improvements Agreement required under Title 10 or Title 11 of the *Summit County Code*.
3. **Maintenance of Stormwater Facilities**. The Owner shall, at its sole cost and expense, adequately maintain the Stormwater Facilities. Owner’s maintenance obligations shall include all system and appurtenances 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 good working condition so that the Stormwater Facilities are performing their

design functions. The Owner shall, at its sole cost and expense, perform all work necessary to keep the Stormwater Facilities in good working condition.

4. **Annual Maintenance Report of Stormwater Facilities.** Annually, the Owner shall, at its sole cost and expense, inspect the Stormwater Facilities and submit an inspection report and certification to the County Engineer (the "**Inspection Report**"). The purpose of this 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 parking lots, structural improvements, berms, channels, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies shall be noted in the Inspection Report. The certification within the Inspection Report shall certify that adequate maintenance has been performed and that the structural controls are operating as designed to protect water quality. The Inspection Report shall be due by January 31st of each year and shall be on forms approved by the County Engineer.

5. **County Oversight Inspection Authority.** The Owner hereby grants permission to the County, its authorized agents and employees, to enter upon the Property and to inspect the Stormwater Facilities upon reasonable notice not less than three (3) business days to the Owner. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the County. The purpose of the inspection 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 County Regulations, and the Stormwater Facilities Maintenance Plan.

6. **Notice of Deficiencies.** If the County finds that the Stormwater Facilities contain any defects or are not being maintained adequately, the County shall send Owner written notice of the defects or deficiencies and provide Owner with a reasonable time, but not less than sixty (60) calendar days, to cure such defects or deficiencies. Such notice shall be sent certified mail to the Owner at the address listed herein.

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

8. **County's Corrective Action Authority.** In the event the Owner fails to adequately maintain the Stormwater Facilities in good working condition acceptable to the County Engineer, after due notice of deficiencies as provided in Section 6 above, and failure to cure, then, upon Owner's failure to cure or correct within thirty (30) calendar days following a second notice delivered to Owner by certified mail, the County may issue an administrative citation in accordance with the Administrative Code Enforcement Hearing Program, *Summit County Code* Title 1, Chapter 13, as amended, in addition to any State or EPA fine. The County may also give written notice that the

facility storm drain connection will be disconnected. Any damage resulting from the disconnection is subject to the aforementioned cure periods. The actions described in this Section 8 are in addition to and not in lieu of any and all equitable remedies available to the County 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.

9. **County Disclaimer.** It is expressly understood and agreed that the County 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 County.

10. **Reimbursement of Costs.** In the event the County, pursuant to this Agreement, incurs any costs, or expends any funds resulting from enforcement or cost for labor, use of equipment, supplies, materials, and the like related to storm drain disconnection from the County system, the Owner shall reimburse the County upon demand, within thirty (30) calendar days of receipt thereof for all actual costs incurred by the County. After said thirty (30) calendar 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 County in collection of delinquent payments.

11. **Recording; Status of Exhibit B.** This Agreement, inclusive of Exhibit A, shall be recorded against the Property in the Office of the Summit County Recorder. While Exhibit B, the Long-Term Stormwater Management Plan, shall not be recorded, it remains fully incorporated herein, and a copy of such shall be on file with the County Engineer. The Long-Term Stormwater Management Plan must be adaptable to change, when, in the judgment of the County Engineer, site conditions and/or operations change, or when existing structures prove ineffective. The Owner shall be responsible to apply to the County Engineer for any revisions to the Long-Term Stormwater Management Plan.

12. **Successor and Assigns.** 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.

13. **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.

14. **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 Summit County, Utah.

15. **Indemnification**. This Agreement imposes no liability of any kind whatsoever on the County, and the Owner agrees to hold the County harmless from any liability in the event the Stormwater Facilities fail to operate properly. The Owner shall indemnify and hold the County harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against the County from failure of Owner to comply with its obligations under this Agreement relating to the Stormwater Facilities.

16. **Amendments**. This Agreement shall not be modified except by written instrument executed by the County and the Owner of the Property at the time of modification, and no modification shall be effective until recorded in the Office of the Summit County Recorder.

17. **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 this Agreement.

18. **Counterparts**. This Agreement may be executed in any number of counterparts originals, each of which shall be deemed an original instrument for all purposes, but all of which shall comprise one and the same instrument.

19. **No Third Party Beneficiary Rights**. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a Party hereto.

20. **Authority**. The individuals who execute this Agreement represent and warrant that they are duly authorized to execute this instrument on behalf of each Party and that no other signature, act, or authorization is necessary to bind the Parties to this Agreement.

[SIGNATURE PAGES TO FOLLOW]

