



STORMWATER MANAGEMENT FACILITIES MAINTENANCE AGREEMENT

THIS STORMWATER MANAGEMENT FACILITIES MAINTENANCE AGREEMENT

made this ___ day of _____, 20___, by _____
(individual, partnership, association, corporation, LLC)
(the "Owner") and NORTH LOGAN CITY, a municipal corporation of the State of Utah, (the
"City").

W I T N E S S E T H:

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City of North Logan as set forth in the North Logan City Stormwater Management Ordinance effective March 3, 2006, as amended (the "Ordinance"), adopted pursuant to the Utah Water Quality Act, Title 19, Chapter 5, Utah Code Annotated 2004, as amended (the "Act"); and

WHEREAS, the Owner is the owner in fee simple of a certain tract or parcel of land more particularly described on Schedule A attached hereto (the "Property"); and

WHEREAS, Owner desires to construct certain improvements on the Property which will alter existing storm and surface water conditions on both the Property and 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 and system (the "Facility and System") more particularly described and shown on plans titled sheets ___ through ___ of _____ prepared by _____ and dated _____, which plans and any amendments thereto, are on file with the City of North Logan, Utah and are hereby incorporated by reference (the "Site Plan"); and

WHEREAS, the City has reviewed and approved the Site Plan subject to the execution of this Agreement.

NOW, THEREFORE, in consideration of the benefit received and to be received by the Owner, its successors and assigns, as a result of the City's approval of the Site Plan, the Owner, hereby covenants and agrees with the City as follows:

1. At their sole expense, the Owner, its successors and assigns, shall construct and perpetually maintain the Facility and System in strict accordance with the



Act, the Ordinance and the Site Plan and any amendments thereto which have been approved by the City.

2. At their sole expense, the Owner, its successors and assigns, shall make such changes or modifications to the Facility and System as may be determined as reasonably necessary by the City to ensure that the Facility and System is properly maintained and continues to operate as originally designed and approved.

3. At reasonable times and in a reasonable manner as provided in Section 13G-350 of the Ordinance, the City, its agents, employees and contractors, shall have the right of ingress and egress over the Property and the right to inspect the Facility and System in order to ensure that the Facility and System is being properly maintained, is continuing to perform in an adequate manner and is in compliance with the Act, the Ordinance and Site Plan and any amendments thereto approved by the City.

4. Should either the Owner or its successors and assigns, fail to correct any defects in the Facility and System within the time specified in a written notice from the City that the Owner or its successors and assigns has/have failed to maintain the Facility and System in accordance with the approved design standards and/or the Site Plan and in accordance with the law and applicable regulations of the Act and the Ordinance, the City may pursue such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in Section 13G-400 *et seq.* of the Ordinance.

5. The Owner, its successors and assigns, shall indemnify, hold harmless and defend the City from and against any and all claims, demands, suits, liabilities, losses, damages and payments, including reasonable attorney fees claimed or made against the City that are alleged or proven to result or arise from the Owner's, its successors' and/or assigns', construction, operations or maintenance of the Facility and System.

6. This Agreement and the covenants and agreements contained herein shall run with the title to 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.

7. Initially, the Owner is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the Property or any portion thereof (a "Transfer") to a third party (the "Transferee"), the Owner shall be released of all of its obligations and responsibilities under this Agreement accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the Property included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded, written agreement for the benefit of the City. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such



deed or instrument. A copy of such deed, instrument or agreement shall be provided to the City before recording with the Cache County Recorder for review and approval and a copy of the recorded document shall be provided to the City, showing proof of recording, after it has been recorded with the Cache County Recorder. The provisions of the preceding three sentences shall be applicable to the original Owner and any successor Transferee who has assumed the obligations and responsibilities of the Owner under this Agreement as provided above.

8. Nothing herein shall be construed to prohibit a transfer by the Owner to subsequent owners and assigns.

9. 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. This Agreement shall be interpreted under the laws of the State of Utah.

10. _____, *the Noteholder, being the holder of a note or notes secured by a lien on the Property through a deed of trust dated _____, from _____ to _____ and _____, Trustees, either of whom may act, recorded in the County Recorder's Office (the "County Recorder's Office") in Deed Book _____, at page _____ (the "Deed of Trust"), joins in the execution of this Agreement to evidence its consent to the provisions hereof and to direct the Trustee to execute same for subordination purposes. At the direction of the Noteholder, the Trustee joins herein to subordinate the lien of the Deed of Trust, and the Noteholder and the Trustee hereby acknowledge and agree that the lien of the Deed of Trust is hereby subordinated to this Agreement, the covenants created or set forth herein and all of the rights of the City hereunder.*

11. This Agreement shall be recorded in the County Recorder's Office.

12. In the event that the City shall determine at its sole discretion at any future time that the Facility and System is no longer required, then at the request of the Owner, its successors and/or assigns, the City shall execute a release of this Agreement which the Owner, its successors and/or assigns, shall record in the County Recorder's Office, at its/their expense.

13. This Agreement shall be deemed to be a Utah contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the State of Utah, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in Cache County, State of Utah.

14. 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 Cache County, Utah.

15. This Agreement shall not be modified except by written instrument executed by the City and the owner(s) of the Property at the time of modification, and no modification shall be effective until recorded in the County Recorder's Office.



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

OWNER ACKNOWLEDGMENT

Owner's Name

BY: _____
(individual, partnership, association, corporation)

(Title) _____

May also require notarized signatures of any Noteholder, Trustee(s), or other "Owner" of the Property as needed.

STATE OF UTAH
CACHE COUNTY

I, _____, a Notary Public in and for the City and State aforesaid, do hereby
certify that _____, and _____,
(name) (name)
_____, and _____, respectfully,
(title) (title)

of _____, whose names as such are signed to the foregoing
(name of corporation, partnership, individual, association)

Agreement, have acknowledged the same before me in my City and State aforesaid.

GIVEN under my hand this ____ day of _____, 20__.

Notary Public My Commission Expires: _____



CITY'S ACKNOWLEDGMENT

APPROVED AS TO FORM:

Signature - City Attorney

ATTEST: **NORTH LOGAN CITY, UTAH**

City Recorder

City Administrator/Authorized Designee of the City Administrator

STATE OF UTAH
CACHE COUNTY

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that _____, CITY ADMINISTRATOR/ AUTHORIZED DESIGNEE OF THE CITY ADMINISTRATOR, and _____, CITY RECORDER, whose name is signed to the foregoing agreement, bearing date the ____ day of ____, 20____, has acknowledged the same before me in my City and State aforesaid.

GIVEN under my hand this ____ day of _____, 20____.

Notary Public

My commission Expires: _____