

TAX ID#:

Submit to:

City Recorder
1307 N. Commerce Drive, Suite 200
Saratoga Springs, UT 84045

When recorded, mail to:

Email: _____

LONG-TERM STORM WATER MANAGEMENT AGREEMENT

This Long-Term Storm Water Management Agreement (“Agreement”) is made and entered into this _____ day of _____, 20_____, by and between the City of Saratoga Springs, a Utah municipal corporation (“City”), and _____, a _____ (“Owner”).

RECITALS

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City pursuant to its Municipal Separate Storm Sewer System (“MS4”) permit issued as required by the Utah Water Quality Act and the Federal Water Pollution Control Act (“Act”), and as further set forth in the City Storm Water Ordinance contained in Title 18 of the City Code and the Standard Technical Specifications and Drawings Manual, as amended (“Ordinance”); 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 (“Property”); and

WHEREAS, the Owner has developed the Property such that it discharges storm and surface water into the City’s MS4; and

WHEREAS, in order to accommodate and regulate these anticipated storm and surface water discharges, the Owner is required to operate 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 site plan or subdivision plan for the Property and related engineering

drawings, and any amendments thereto, which plans and drawings are on file with the City and are hereby incorporated herein by this reference (“Development Plan”); and

WHEREAS, summary description of all Storm Water Facilities, details and all appurtenances draining to and affecting the Storm Water Facilities and establishing the standard operation and routine maintenance procedures for the Storm Water Facilities, and control measures installed on the Property Storm Water are more particularly shown in Exhibit “B” on file with the City Recorder (“Long Term Storm Water Management Plan”); and

WHEREAS, a condition of continued discharge into the City’s MS4, and as required as part of the City’s Small MS4 UPDES General Permit from the State of Utah and Federal Government, Owner is required to enter into this Agreement establishing a means of documenting the execution of the Long Term Storm Water Management Plan.

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 Long Term Storm Water Management Plan, and the mutual covenants contained herein, the parties agree as follows:

Section 1

Operation of Storm Water Facilities. The Owner shall, at its sole cost and expense, operate the Storm Water Facilities in accordance with the Development Plans and specifications, and any amendments thereto which have been approved in writing by the City.

Section 2

Maintenance of Storm Water Facilities. The Owner shall, at its sole cost and expense, adequately maintain the Storm Water Facilities. Owner’s maintenance obligations shall include but are not limited to all system and appurtenances built to convey storm water, as well as all structures, berms, channels, outlet structures, pond areas, access roads, improvements, treatment devices, pipes, culverts, ditches, vegetation, etc. 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.

Section 3

Annual Maintenance Report of Storm Water Facilities. The Owner shall, at its sole cost and expense, cause the Storm Water Facilities to be inspected by a Utah-licensed professional engineer, and shall cause that an inspection report and certification from the engineer be submitted to the City annually. The purpose of the

inspection and certification is to ensure 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 parking lots, structural improvements, berms, channels, outlet structure, pond areas, access roads, treatment devices, pipes, culverts, ditches, 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, which acceptance shall be in writing from the City.

Section 4

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 upon reasonable notice not less than two (2) business days to the Owner, except in the case of an emergency, in which case an inspection may be performed with or without notice. 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 Act, the Ordinance, and the Storm Water Facilities Maintenance Plan.

Section 5

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, but not less than thirty (30) days, to cure such defects or deficiencies. Such notice shall be confirmed delivery to the Owner or sent certified mail to the Owner at the address listed on the County Tax Assessor.

Section 6

Owner to Maintain, Repair, and Replace. The Owner shall, at its sole cost and expense, maintain, repair, replace, change or modify the Storm Water Facilities as may be determined as reasonably necessary by the City in writing within the required cure period to ensure that the Storm Water Facilities are adequately maintained, repaired, and replaced, and continue to operate as designed and approved in writing.

Section 7

City's Corrective Action Authority. In the event the Owner fails to adequately maintain, repair, or replace the Storm Water Facilities so that the facilities continue in good working condition acceptable to the City after the notice period in Section 5

expires, then the City may issue a Citation punishable as a Misdemeanor or administrative violation per City ordinances, in addition to any State or EPA fine. The City may also give written notice that the facility storm drain connection will be disconnected. The City may also enter upon the property to maintain, replace, or repair the Storm Water Facilities and assess the costs to Owner pursuant to this Agreement. 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 equitable 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.

Section 8

Reimbursement of Costs. In the event the City, pursuant to this Agreement, incurs any costs or expenses relating to enforcement of this Agreement, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all 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. Any and all costs and expenses may be attached as a lien on the Owner's Property pursuant to state law, and the Owner hereby gives the City the express authority to record such a lien on the Property.

Section 9

Successor and Assigns. This Agreement shall be recorded in the County Recorder's Office and 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. The Owner or any subsequent owners may be continue to be held liable for the obligations in this Agreement unless the Owner/grantor and the purchaser/grantee sign a written assignment agreement in which the purchaser/grantee agrees to assume all obligations and requirements of this Agreement regardless of when the obligation incurred.

Section 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.

Section 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 Fourth Judicial District, Utah County, Utah.

Section 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 or any violation of this Agreement takes place. The Owner shall indemnify and hold the City harmless for any and all damages, accidents, casualties, occurrences, claims, actions, or suits which might arise or be asserted against the City from failure of Owner to comply with its obligations under this agreement relating to the Storm Water Facilities or Owner's operation of the Storm Water Facilities.

Section 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 Utah County Recorder's Office.

Section 14

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 the Agreement.

Section 15

Exhibit B. The Long-Term Storm Water Management Plan (LTSWMP) must adapt to change in good judgment when site conditions and operations change and when existing programs are ineffective. Exhibit B will not be filed with the agreement at County Recorder but is included by reference and kept on file with the City Recorder. Revision applications must be filed with the City of Saratoga Springs and amended into the LTSWMP on file with the Saratoga Springs City recorder.

Section 16

Incorporation of Recitals. The Recitals set forth in the introductory paragraphs are hereby incorporated by this reference and are made a part of this Agreement.

LONG-TERM STORM WATER MANAGEMENT PLAN AGREEMENT

SO AGREED this _____ day of _____ 20_____.

PROPERTY OWNER

By: _____ Title: _____

By: _____ Title: _____

STATE OF UTAH)

:ss.

COUNTY OF)

The above instrument was acknowledged before me by _____, this _____ day of _____, 20_____.

Notary Public
Residing in: _____
My commission expires: _____

_____ **CITY**

By: _____ Date: _____
City Manager _____

Attest: _____
City Recorder

STATE OF UTAH)

:ss.

COUNTY OF)

The above instrument was acknowledged before me by _____, this _____ day of _____, 20_____.

Notary Public
Residing in: _____
My commission expires: _____

LTSWMP_____

Attachments:

Exhibit A: Legal Description

Exhibit B: Long-Term Storm Water Management Plan; Filed with _____ City Recorder