

**When recorded, mail to:**

Cottonwood Heights City Recorder  
2277 East Bengal Blvd  
Cottonwood Heights, UT 84121

Affects Parcel No(s): \_\_\_\_\_

## Long Term Stormwater Management Agreement

**THIS LONG TERM STORMWATER MANAGEMENT AGREEMENT** (this “*Agreement*”) is made and entered into effective \_\_\_\_\_, 20\_\_\_\_\_, by and between **COTTONWOOD HEIGHTS**, a Utah municipal corporation (the “*City*”), and \_\_\_\_\_, a \_\_\_\_\_ (the “*Owner*”).

### **RECITALS:**

A. The City is authorized and required to regulate and control the disposition of storm and surface waters within the City, as set forth in the City's Code of Ordinances, including Title 17 of that code (the “*Ordinance*”), adopted pursuant to the Utah Water Quality Act, UTAH CODE ANN. §§ 19-5-101, *et seq.*, as amended (the “*Act*”).

B. The Owner hereby represents and acknowledges that it is the owner in fee simple of certain real property more particularly described on the exhibit attached hereto and incorporated herein by this reference (the “*Property*”).

C. 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.

D. 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 expense a storm and surface water management facility or improvements on the Property (the “*Stormwater Facilities*”).

E. 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 specifications, and any amendments thereto, which are on file with the City and are hereby incorporated herein by this reference (the “*Development Plan*”).

F. A summary description (as amended from time to time, the “*Long Term Stormwater Management Plan*” or the “*LTSM*”) of all Stormwater Facilities, details and all appurtenance draining to and affecting the Stormwater Facilities, establishing the standard operation and routine maintenance procedures for the Stormwater Facilities, and specifying the control measures installed on the Property, is on file with the City's Recorder.

G. As a condition of the City's approval of the Development Plan, and as required by the City's Small MS4 UPDES General Permit from the State of Utah, the Owner is required to enter into this Agreement to documenting the Owner's agreement to impose the requirements of the LTSMP against 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 LTSMP, and the mutual covenants contained herein, the parties agree as follows:

Section 1. **Construction of Stormwater Facilities**. The Owner shall, at its sole cost and expense, construct the Stormwater Facilities in accordance with the Development Plan as approved by the City.

Section 2. **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 systems 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 and provide all materials necessary to keep the Stormwater Facilities adequately maintained and in good working condition.

Section 3. **Annual Maintenance Report of Stormwater Facilities**. The Owner shall, at its sole cost and expense, inspect the Stormwater 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 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, treatment systems, 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.

Section 4. **City Oversight Inspection Authority**. The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property to inspect the Stormwater Facilities upon at least three days' prior notice to the Owner. 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 Stormwater Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the LTSMP.

Section 5. **Notice of Deficiencies**. If the City finds that the Stormwater 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 (typically at least 60 days) to cure such defects or deficiencies. Such notice shall be confirmed hand-delivery to the Owner or sent certified mail to the Owner at the address then listed on the Salt Lake County Assessor's tax assessment records.

Section 6. **Owner to Make Repairs.** Within the required cure period, the Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the Stormwater Facilities as the City may deem reasonably necessary to ensure that the Stormwater Facilities are adequately maintained and will continue to operate as designed and approved.

Section 7. **City's Corrective Action Authority.** If the Owner fails to cure the deficiencies noted in a notice of deficiencies from the City within the required cure period, then the City may give a follow-up notice of deficiencies to the Owner. If the Owner fails to cure the deficiencies within an additional 30 days from that second notice, then the City may (a) issue a citation punishable as a Class B misdemeanor in addition to any EPA fine; and (b) give written notice that the Stormwater Facilities will be disconnected from the City's stormwater drainage system; and (c) pursue any and all other available remedies. The City has 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 City. The actions described in this Section are in addition to and not in lieu of any and all remedies available to the City as provided by law or equity for Owner's failure to remedy deficiencies or any other failure to perform under this Agreement.

Section 8. **Reimbursement of Costs.** If pursuant to this Agreement the City 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 City's system, the Owner shall reimburse the City within 30 days after City's written demand. After said 30 days, such amount shall be deemed delinquent and shall be subject to interest at the rate of ten percent 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.

Section 9. **Successor and Assigns.** This Agreement shall be recorded in the Salt Lake 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.

Section 10. **Severability Clause.** The provisions of this Agreement are severable, and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the parties or their successors and assigns is held invalid, the remainder of this Agreement 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 the appropriate court of competent jurisdiction in Salt Lake 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 Stormwater 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



**CITY:**

**ATTEST:**

**COTTONWOOD HEIGHTS**, a Utah municipality

By: \_\_\_\_\_  
**Paula Melgar**, Recorder

By: \_\_\_\_\_  
**Kelvin H. Cullimore, Jr.**, Mayor

STATE OF UTAH                    )  
  :SS.  
COUNTY OF SALT LAKE    )

The above instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_\_,  
by **Kelvyn H. Cullimore, Jr.** and **Paula Melgar**, as the mayor and the recorder, respectively, of  
**Cottonwood Heights**, a Utah municipality.

\_\_\_\_\_  
Notary Public

Exhibit to  
Long Term Stormwater Management Agreement

(Attach Plat and Legal Description of the Property)