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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
02/04/2021 02:51 PM
FEE \$0.00 Pgs: 9
DEP RT REC'D FOR LAYTON CITY CORP

When recorded, mail to:

Layton City Recorder
437 N. Wasatch Dr.
Layton, Utah 84041

Affects Parcel No(s): part of 11-794-6005

LAYTON CITY
STORM WATER FACILITIES
MAINTENANCE AGREEMENT

This Storm Water Facilities Maintenance Agreement ("Agreement") is made and entered into this 4th day of December, 2020, by and between Layton City, a Utah municipal corporation ("City"), and Burger LAD: Layton, a Utah 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 the Layton City Storm Water Ordinance, as amended ("Ordinance"), adopted pursuant to the Utah Water Quality Act, as set forth in *Utah Code Ann.* §§ 19-5-101, *et seq.*, as amended ("Act"); 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 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 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, 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. Construction of Storm Water Facilities. The Owner shall, at its sole cost and expense, 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.
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 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.
3. Annual Inspection of Storm Water Facilities. The Owner shall, at its sole cost and expense, 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 July 31st of each year and shall be on forms acceptable to the City.
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 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 Act, the Ordinance, and the Development Plan.
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 to cure such defects or deficiencies. Such notice shall be hand-delivered to the Owner or sent certified mail to the Owner at the Property address.

6. 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.
7. 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 in Section 5, 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.
8. 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.
9. Successors and Assigns. This Agreement shall be recorded in the Davis 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.
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.
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.

[Signature and Notary pages to follow]

IN WITNESS WHEREOF, the OWNER has executed this Storm Water Facilities Maintenance Agreement
this 4 day of 12, 2020.

OWNER:



OWNER'S SIGNATURE

(Signature must be notarized on following pages)

Laura Parks Owner

OWNER'S NAME & TITLE



ATTEST:

Kimberly S Read

KIMBERLY S READ, City Recorder

LAYTON CITY ACCEPTANCE:



ALEX R. JENSEN, City Manager

SWT

Approved as to Form:

By: [Signature]

Date: 1/19/2021

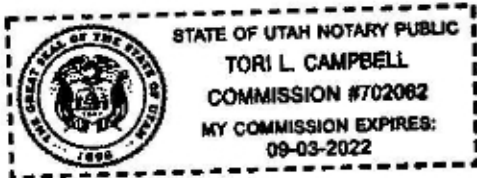
CITY ACKNOWLEDGMENT

STATE OF UTAH

:ss.

COUNTY OF DAVIS

On this 20 day of January, 2021, personally appeared before me Alex R. Jensen, who being duly sworn, did say that he/she is the City manager of LAYTON CITY, a municipal corporation of the State of Utah, and that the foregoing Storm Water Facilities Maintenance Agreement was signed in his/her capacity as land use authority on behalf of the City for approval of Storm Water Facilities Maintenance Agreements.



Tori L. Campbell
Notary Public

OWNER NOTARY

(Complete only if signing as an individual)

STATE OF _____

:ss.

COUNTY OF _____

On this _____ day of _____, 20____, personally appeared before me _____, who being duly sworn, did say that he/she is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that he/she has executed this Agreement with full authority to do so.

Notary Public

(See Following Page for Corporation/Partnership and Limited Liability Company Notaries)

(Complete only if signing on behalf of a Corporation/Partnership)

STATE OF _____
:ss.
COUNTY OF _____

On this _____ day of _____, 20 ____, personally appeared before me _____ who being by me duly sworn did say that he/she is the _____ of _____, a _____ corporation/partnership, and that _____ is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that the foregoing Storm Water Facilities Maintenance Agreement was signed in behalf of said corporation/partnership by authority of its Board of Directors/by-laws, and he/she acknowledged to me that said corporation/partnership executed the same.

NOTARY PUBLIC

(Complete only if signing on behalf of a Limited Liability Company)

STATE OF Utah
:ss.
COUNTY OF Davis

On this 4th day of December, 20 20, personally appeared before me Lance Parks who being by me duly sworn did say that he/she is the manager of Burger Lads Layton, a limited liability company, and that the foregoing Storm Water Facilities Maintenance Agreement was signed in behalf of said company by authority, and he/she acknowledged to me that said company executed the same.



Alesa Shelby 713230
NOTARY PUBLIC
commisson expires 07-31-2024

****IF ADDITIONAL SIGNERS AND/OR NOTORIAL WORDING ARE NECESSARY, PLEASE NOTATE ANY ADDITIONS ON THIS NOTARY PAGE AND ATTACH A STATE APPROVED NOTARIAL CERTIFICATE, WHICH IDENTIFIES THE DOCUMENT THE ATTACHED NOTARIAL CERTIFICATE RELATES TO, AS WELL AS, THE NUMBER OF PAGES IN THE DOCUMENT****

By: TRW

Date: July 22, 2020

Project: 9641

Parcel No(s) _____

EXHIBIT A - FORT LANE DESCRIPTION

A portion of Parcel 5, Fort Lane Village Amended, located in the North Half of Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian, Layton City, Davis County, Utah. Being more particularly described as follows:

Beginning at a point on the southerly right-of-way-line of Gentile Street, said point being South 00°32'40" West 73.00 feet and North 89°27'20" West 60.17 feet from the North Quarter Corner of said Section 28 and running thence:

South 00°32'40" West 337.34 feet to the South line of Parcel 5;
thence North 89°12'40" West 194.37 feet along the South line to the Southwest Corner of Parcel 5;

thence along the West line of Parcel 5 the following three (3) courses and distances:

- 1) North 00°39'43" East 73.81 feet;
- 2) North 10°25'30" East 91.38 feet;
- 3) North 00°32'40" East 172.68 feet to the southerly right-of-way of Gentile Street;

thence South 89°27'20" East 178.53 feet along said southerly Right-of-way to the Point of Beginning.

Contains: 62,026 square feet or 1.424 acres.

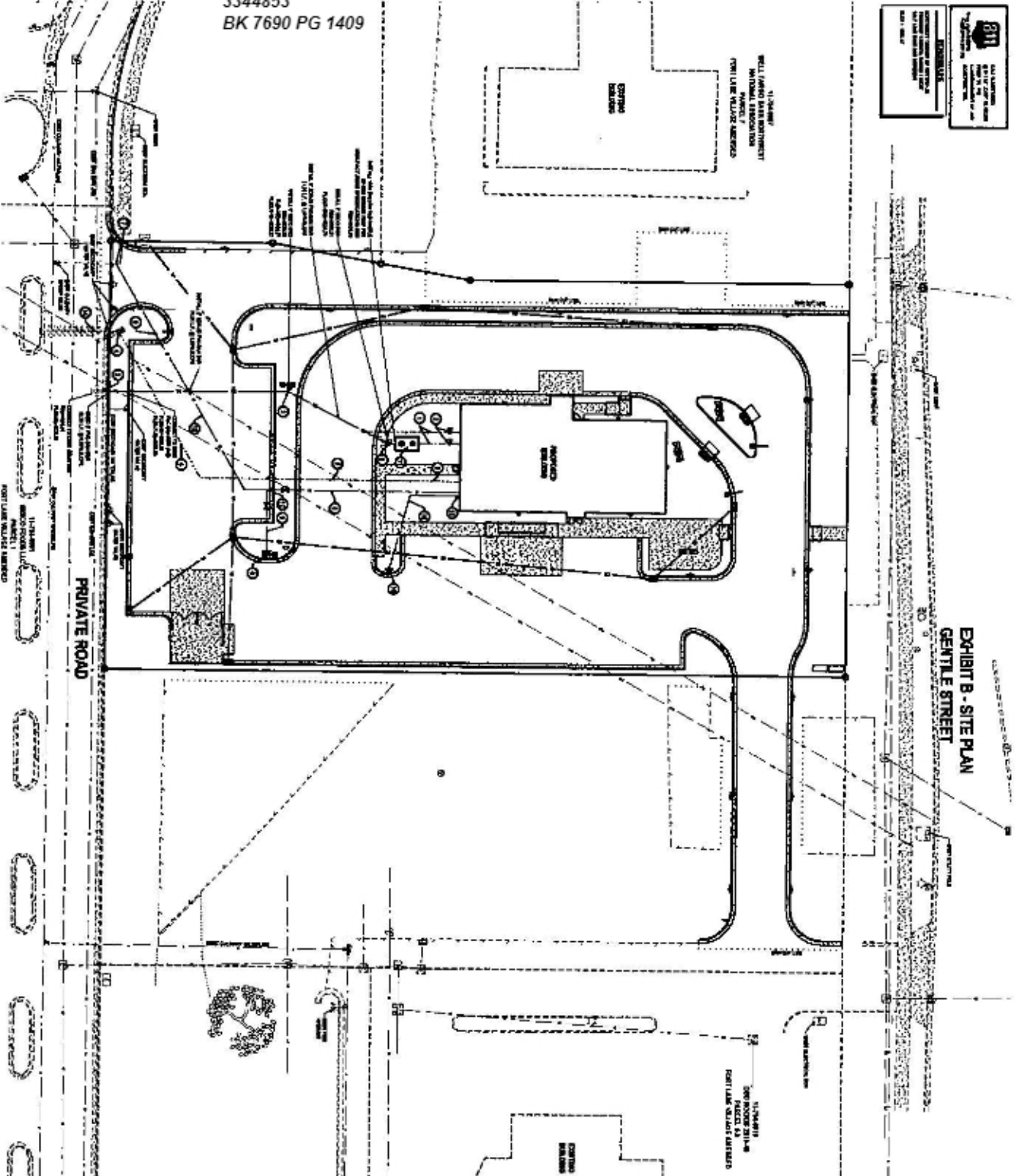


EXHIBIT B - SITE PLAN
GENTLE STREET

- GENERAL NOTES:**
1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AGENCIES.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY EASEMENTS AND RIGHTS-OF-WAY FROM THE ADJACENT PROPERTY OWNERS.
 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY UTILITIES INFORMATION FROM THE LOCAL UTILITY COMPANIES.
 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY SURVEYING INFORMATION FROM THE LOCAL SURVEYING PROFESSIONALS.
 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY GEOTECHNICAL INFORMATION FROM THE LOCAL GEOTECHNICAL ENGINEERS.
 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY ENVIRONMENTAL INFORMATION FROM THE LOCAL ENVIRONMENTAL AGENCIES.
 7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY HISTORICAL INFORMATION FROM THE LOCAL HISTORICAL SOCIETY.
 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY ARCHITECTURAL INFORMATION FROM THE LOCAL ARCHITECTURAL FIRMS.
 9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY LANDSCAPE INFORMATION FROM THE LOCAL LANDSCAPE ARCHITECTS.
 10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY SIGNAGE INFORMATION FROM THE LOCAL SIGNAGE PROFESSIONALS.
 11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PAVING INFORMATION FROM THE LOCAL PAVING CONTRACTORS.
 12. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY ELECTRICAL INFORMATION FROM THE LOCAL ELECTRICAL CONTRACTORS.
 13. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY MECHANICAL INFORMATION FROM THE LOCAL MECHANICAL CONTRACTORS.
 14. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PLUMBING INFORMATION FROM THE LOCAL PLUMBING CONTRACTORS.
 15. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY CONSTRUCTION INFORMATION FROM THE LOCAL CONSTRUCTION FIRMS.
 16. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE INFORMATION FROM THE LOCAL INSURANCE COMPANIES.
 17. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY BOND INFORMATION FROM THE LOCAL BOND AGENTS.
 18. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY FINANCIAL INFORMATION FROM THE LOCAL FINANCIAL INSTITUTIONS.
 19. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY LEGAL INFORMATION FROM THE LOCAL LEGAL FIRMS.
 20. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY TAX INFORMATION FROM THE LOCAL TAX PROFESSIONALS.



CULVER'S RESTAURANT
LAYTON
340 EAST GENTLE STREET
LAYTON, UTAH



ENSIGN
THE STRONGER CONNECTION

LAYTON
LAYTON, UTAH
PHONE 801.977.1100
FAX 801.977.1100

TOMERIS
THOMAS J. K. LAYTON
CHIEF ENGINEER
PHONE 801.977.1100
FAX 801.977.1100

DAVID L. SMITH
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FAX 801.977.1100

C-400

