

12702031  
01/22/2018 01:49 PM \$0.00  
Book - 10640 Pg - 4599-4609  
ADAM GARDINER  
RECORDER, SALT LAKE COUNTY, UTAH  
SOUTH JORDAN  
1600 W TOWNE CENTER DR  
SOUTH JORDAN UT 84095-8265  
BY: MMA, DEPUTY - MI 11 P.

**When recorded, mail to:**

South Jordan City Recorder  
1600 Towne Center Drive  
South Jordan, Utah 84095

Affects Parcel No(s): 26-242570030000

Property/Subdivision: Lot C-115 of DayBreak South Station PLAT 1

Project Name: DayBreak South Station

**SOUTH JORDAN CITY  
STORMWATER FACILITIES  
MAINTENANCE AGREEMENT**

This Stormwater Facilities Maintenance Agreement ("Agreement") is made and entered into this 3<sup>rd</sup> day of January, 2018, by and between South Jordan City, a Utah municipal corporation ("City"), and Destination Homes a INC. ("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 South Jordan City Stormwater 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 ("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 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 Stormwater 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 Stormwater Facilities.** The Owner shall, at its sole cost and expense, construct the Stormwater 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 Stormwater Facilities.** The Owner shall, at its sole cost and expense, adequately maintain the Stormwater Facilities. Owner's maintenance obligations shall include all pipes and channel 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. In the event that a maintenance schedule is set forth in the Development Plan, such maintenance schedule shall be followed.

3. **Annual Inspection 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 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 31<sup>st</sup> 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 Stormwater 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 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 Development Plan.

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 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 Stormwater Facilities as may be determined as reasonably necessary by the City within the required cure period to ensure that the Stormwater 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 Stormwater 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 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 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. **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.

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 Salt Lake 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 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 City from the construction, presence, existence, or maintenance of the Stormwater 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 Salt Lake 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 page to follow]*

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

**"City"**  
South Jordan City

By: Bill Kassar  
Its: City Engineer

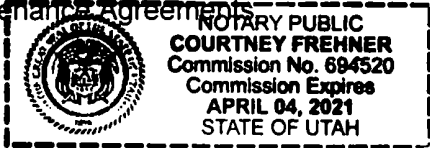
**"Owner"**  
Destination Homes

By: David S Bailey  
Print Name: DAVID S BAILEY  
Title: VICE PRESIDENT

CITY ACKNOWLEDGMENT

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

On the 22 day of January, 2018, personally appeared before me Brad Flavano City Engineer, who being duly sworn, did say that he/she is the City Engineer of **SOUTH JORDAN CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in his/her capacity as land use authority on behalf of the City for approval of Stormwater Facilities Maintenance Agreements.



Courtney Frehner  
Notary Public

My Commission Expires:  
April 4, 2021

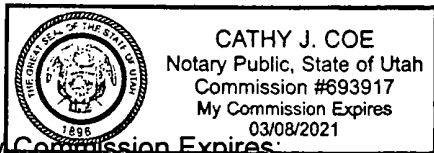
Residing at:  
Salt Lake County

OWNER ACKNOWLEDGMENT

Note: If Owner is a corporation, limited liability company, partnership, trust or other legal entity, rather than an individual, a separate applicable acknowledgement must be provided.

STATE OF UTAH )  
 DAVIS : ss.  
COUNTY OF SALT LAKE )

On the 3 day of January, 2018, personally appeared before me David S. Bailey, who being duly sworn, did say that he/she is the legal property owner of record of the property subject to this Maintenance Agreement and that he/she has executed this Agreement with full authority to do so.



My Commission Expires:  
3.8.2021

Cathy J. Coe  
Notary Public

Residing at: 67 S. Main St. Ste 300  
Layton, Utah 84041

---

**Exhibit "A"**  
**Property Legal Description**

### South Station Apartments Future Parcel C-115 Description

Beginning at a point on the Northeasterly line of a Quit Claim Deed recorded May 16, 2008 as Entry 1049973 in the Salt Lake County Recorder's Office, said point lies South 89°58'42" East 77.755 feet along the Section Line and North 2915.431 feet from the South Quarter Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Northeasterly line North 36°43'14" West 663.681 feet; thence North 53°16'46" East 159.212 feet to a point on a 467.500 foot radius tangent curve to the right, (radius bears South 36°43'14" East); thence along the arc of said curve 116.275 feet through a central angle of 14°15'01"; thence North 67°31'47" East 519.457 feet to the Southwesterly line of Lake Run Road; thence along Lake Run Road South 36°32'54" East 594.229 feet; thence South 53°27'06" West 183.675 feet to a point on a 467.500 foot radius tangent curve to the right, (radius bears North 36°32'54" West); thence along the arc of said curve 103.620 feet through a central angle of 12°41'58"; thence South 66°09'04" West 209.272 feet to a point on a 532.500 foot radius tangent curve to the left, (radius bears South 23°50'56" East); thence along the arc of said curve 118.027 feet through a central angle of 12°41'58"; thence South 53°27'06" West 168.530 feet to the point of beginning.

Property contains 11.579 acres.



**SUPPLEMENTAL CONTACT INFORMATION SHEET  
FOR  
SOUTH JORDAN CITY  
STORMWATER FACILITIES  
MAINTENANCE AGREEMENT**

**CONTACT INFORMATION**

Name (Main Contact): John Plyer - Destination Homes Phone: 801-842-8360  
Address: 67 S. MAIN St. Suite 300  
City: LAYTON State: UT Zip: 84041  
Contact Person: John Plyer Phone: 801-842-8360  
Contact Email: JPLYER@DestinationHomes.com

**SECONDARY CONTACT INFORMATION (ASSIGNED/ OR DEPARTMENT)**

Name (Main Contact): Eric Swanson - Destination Homes Phone: 801-663-6182  
Address: 67 S. MAIN St. Suite 300  
City: LAYTON State: UT Zip: 84041  
Contact Person: Eric Swanson Phone: 801-663-6182  
Contact Email: ESWANSON@DestinationHomes.com

CITY ACKNOWLEDGMENT

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

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who being duly sworn, did say that he/she is the \_\_\_\_\_ of SOUTH JORDAN CITY, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in his/her capacity as land use authority on behalf of the City for approval of Stormwater Facilities Maintenance Agreements.

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

My Commission Expires:  
\_\_\_\_\_

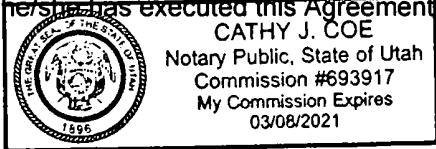
Residing at:  
\_\_\_\_\_

OWNER ACKNOWLEDGMENT

Note: If Owner is a corporation, limited liability company, partnership, trust or other legal entity, rather than an individual, a separate applicable acknowledgement must be provided.

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

On the 16 day of January, 2018, personally appeared before me David S. Bailey, who being duly sworn, did say that he/she is the legal property owner of record of the property subject to this Maintenance Agreement and that ~~he/she~~ has executed this Agreement with full authority to do so.



Cathy J. Coe  
Notary Public

My Commission Expires: 3.8.2021

Residing at: 67 S. Main St. Ste 300  
Layton, Utah 84041

**Proposed Amendment to:**

**South Jordan City Stormwater Facilities Maintenance agreement**

the Owners of the South Station Apartments agrees to accept and store runoff from Black Twig Drive and Rambutan Drive as shown in the storm drain report submitted to the city and that the maintenance of the storage and conveyance facilities will also be assumed by South Station Apartment owners.

South Jordan City shall be held harmless, should the underground storage system ever fail.

South Jordan City will be able to inspect the system to ensure it is operating correctly. If South Jordan City sees any issues upon inspection, notice will be given to the Owners of South Station Apartments. Once notice is given, South Station Apartments will need 60 Days to have a third party inspection done to verify any issues, as well as organize any cleaning / repair needed for maintenance purposes. After 60 days, if the South Station Apartment owners have not made any arrangements for remediation, South Jordan City can perform or hire the completion of required work and bill the South Station Apartment owners.

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

**"City"**  
**South Jordan City**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**"Owner"**  
SOUTH STATION APARTMENTS LLC

By: David S Bailey  
Print Name: DAVID S BAILEY  
Title: MANAGER