



W2652794

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ERNEST D ROWLEY, WEBER COUNTY RECORDER
28-AUG-13 8:46 AM FEE \$.00 DEP SGC
REC FOR: OGDEN CITY

STORM WATER EASEMENT AGREEMENT

[Millcreek Manor]

THIS STORM WATER EASEMENT AGREEMENT (this "Agreement") is made and entered into this ___ day of August, 2013 (the "Effective Date"), by and between OGDEN PREPARATORY ACADEMY, INC. ("OPA"); and ASSOCIATION OF CONDOMINIUM UNIT OWNERS OF MILLCREEK MANOR CONDOMINIUMS ("Millcreek").

RECITALS

A. Simultaneously with entering into this Agreement, OPA purchase approximately 1.99 acres of real property from Millcreek as more particularly described in Exhibit A, attached hereto and incorporated by reference herein (the "OPA Back Property"). The adjacent property to be retained by Millcreek following the transfer of the OPA Back Property is defined herein as the "Millcreek Property" and legally described on Exhibit B.

B. The OPA Back Property became a legally subdivided parcel via the recording of that certain amended record of survey map entitled "Millcreek Manor Condominium 1st Amendment" recorded with Entry No. 2652788 at book 74, and page 53, 54, in the Weber County Recorder's office (the "Plat").

C. In conjunction with getting the Plat approved, Ogden City required certain limited storm water control facilities be installed to accommodate some of the storm and flood water that has historically drained to the west from the improved portions of the Millcreek Property and onto the OPA Back Property ("Storm Drain Facilities"). Ogden City also required a loop road be installed that connected the North and the South drives on the Millcreek Property for emergency purposes. The City did not require, and OPA did not design, and OPA does not intend to construct storm water facilities to deal with all storm water that may affect the Millcreek Property.

D. Millcreek now desires and OPA is willing to grant an easement for OPA to collect and discharge some of its storm water onto a portion of the OPA Back Property described as the "Retention Easement Area," and legally described on Exhibit C, all as more fully set forth herein.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Millcreek, and OPA agree as follows:

1. **Recitals.** The recitals set forth above are true, correct and complete in all material respects, and the parties hereto incorporate the above recitals by this reference.

2. **Grant of Easement.** OPA hereby grants a storm drain easement to the Millcreek Property to direct its storm water into the Retention Easement Area. The specific area of this

Easement shall encompass all of the Storm Drain Facilities, as they may be modified from time to time, and any necessary other space to accomplish the intent of this easement.

2. **Storm Drain Facilities.** The Storm Drain Facilities may include a concrete gutter that commences on the western edge of the loop road on the Millcreek Property and then travels north along the western edge of the pavement on the loop road until it turns in a northwesterly direction and terminates in the retention basin on the OPA Back Property. The Storm Drain Facilities also include all other infrastructure, basins, catch drains, trenches, ditches, and French drains as necessary to property catch and retain the storm and flood water from Millcreek. The Storm Drain Facilities shall be designed and constructed to have a minimum capacity of 33,526 cubic feet of water.

3. **Maintenance.** Once the Storm Drain Facilities have been installed by OPA, at its sole cost and expense, and accepted by the City, each party will be solely responsible for maintaining, repairing, and all necessary upgrades to those portions of the Storm Drain Facilities that are on their Property. OPA shall maintain, upgrade, and repair the Storm Drain Facilities on its property such that they shall have a minimum capacity of 33,526 cubic feet of water. Notwithstanding the prior sentence, each party also agrees to be solely responsible for any hazardous materials (beyond those hazardous materials normally associated with flood, storm, and runoff water in an urban environment) that are released on its property and spread to the property of the other party.

4. **Waiver of Claims.** Millcreek acknowledges and agrees that the Storm Drain Facilities are not intended to be a comprehensive system for dealing with all storm water on the Millcreek Property and, therefore, waives all claims associated with storm water that is in excess of the required minimum capacity of the Storm Drain Facilities as required by this Agreement.

5. **Miscellaneous.**

5.1. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the Improvements. All previous agreements, communications, discussions and negotiations relating to the subject matter hereof have been merged and finalized, including statements, terms, and conditions set forth in the Purchase Contract regarding the subject matter hereof. This Agreement may only be modified or amended in writing by both parties hereto.

5.2. **Successors and Assigns.** Subject to the terms and conditions of this Agreement, the provisions of this Agreement shall be considered a covenant that runs with the land herein described and it is intended that the terms, conditions, and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

5.3. **Interpretation.** This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.

5.4. **Captions.** The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

5.5. **Severability.** If any term or provision of this Agreement or the application of it to any person, entity or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

5.6. **Applicable Law.** This Agreement, and the interpretation, validity, effect and performance hereof, shall be governed by the laws of Utah.

5.7. **Attorneys' Fees and Costs.** If any action at law or in equity, or any special proceeding (including bankruptcy proceedings and appeals from lower court rulings), be instituted by either party against the other party to enforce this Agreement or any rights arising hereunder, or in connection with the subject matter hereof, the prevailing party shall be entitled to recover all costs of suit and reasonable attorneys' fees. For purposes of this Paragraph, the term "prevailing party" shall, in the case of a claimant, be the party who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, the party who is successful in denying substantially all of the relief sought by the claimant.

5.8. **Time is of the Essence.** Time is expressly made of the essence of each and every provision of this Agreement.

5.9. **Authority.** The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for which they are executing this Agreement.

5.10. **Non-Fiduciary or Agency Relationship.** The parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly affirm that they have entered into this Agreement as part of an "arms-length" transaction. No party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of any other party hereto, nor shall they make any representation to any third party inconsistent with this Paragraph.

5.11. **Submission.** Submission of this Agreement by OPA to Millcreek shall not constitute an offer on the part of OPA and shall not be binding upon the parties until fully executed by both parties and received by OPA.

5.12. **Counterparts.** This Agreement shall be executed by the parties with one agreement with original signatures, as necessary for recording with the Weber County Recorders Office. Notwithstanding this requirement, this agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same document and agreement. A copy or facsimile transmission of any

part of this Agreement, including the signature page, shall have the same force and effect as an original.

5.13. Survive Closing. All terms and conditions set forth in this Agreement shall survive the closing of the Purchase Contract.

[Signatures commence on the next page.]

IN WITNESS WHEREOF, each of the parties hereto has duly signed and sealed this Agreement or caused such to be done, effective as of the date of this Agreement.

ASSOCIATION OF CONDOMINIUM UNIT OWNERS OF MILLCREEK MANOR CONDOMINIUMS

By: [Signature] 8/15/13
Name: _____ Date
Title: _____

By: [Signature] 8/15/13
Name: _____ Date
Title: _____

By: [Signature] 8/15/13
Name: _____ Date
Title: _____

OGDEN PREPARATORY ACADEMY, INC.

By: [Signature] 8/15/13
Name: _____ Date
Title: _____

EXHIBIT A
OPA Back Property

PART OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, OGDEN CITY, WEBER COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED ON THE SOUTH LINE OF THE MILLCREEK MANOR CONDOMINIUM 1ST AMENDMENT AS RECORDED WITH WEBER COUNTY RECORDER'S OFFICE WHICH POINT IS LOCATED SOUTH 89°13'00" EAST 43.02 FEET AND NORTH 00°58'00" EAST 124.00 FEET FROM THE CENTER OF SECTION 20, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE ALONG A PORTION OF THE PERIMETER OF SAID MILLCREEK MANOR CONDOMINIUM THE FOLLOWING TWELVE (12) COURSES:

SOUTH 46°23'30" WEST 58.04 FEET,
SOUTH 54°45'45" WEST 15.80 FEET,
SOUTH 78°47'49" WEST 94.88 FEET,
SOUTH 46°14'32" WEST 77.57 FEET,
NORTH 89°13'00" WEST 34.77 FEET,
NORTH 01°26'51" EAST 511.32 FEET,
NORTH 87°50'07" EAST 175.28 FEET,
SOUTH 00°51'32" WEST 74.69 FEET,
SOUTH 89°08'28" EAST 5.00 FEET,
SOUTH 00°51'32" WEST 158.92 FEET,
SOUTH 04°03'19" WEST 159.40 FEET,
SOUTH 85°52'38" EAST 60.66 FEET TO THE POINT OF BEGINNING.

CONTAINS: 86,861 SQ. FT. OR 1.99 AC.

12-119-0079 *lx*

EXHIBIT B
Millcreek Property

PART OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, OGDEN CITY, WEBER COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED ON THE WEST LINE OF LINCOLN AVENUE, SAID POINT ALSO BEING LOCATED SOUTH 89°13'00" EAST 352.72 FEET AND NORTH 00°58'00" EAST 56.57 FEET FROM THE CENTER OF SECTION 20, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°02'00" WEST 4.77 FEET TO AN EXISTING FENCE LINE; THENCE ALONG EXISTING FENCE LINES THE FOLLOWING FIVE COURSES:

NORTH 40°35'52" WEST 51.03 FEET,
 NORTH 15°58'41" WEST 28.92 FEET,
 NORTH 84°29'44" WEST 39.82 FEET,
 SOUTH 80°44'12" WEST 88.52 FEET,
 NORTH 83°29'43" WEST 136.47 FEET,
 THENCE NORTH 85°52'38" WEST 60.66 FEET;
 THENCE NORTH 04°03'19" EAST 159.40 FEET;
 THENCE NORTH 00°51'32" EAST 158.92 FEET;
 THENCE NORTH 89°08'28" WEST 5.00 FEET;
 THENCE NORTH 00°51'32" EAST 74.69 FEET;
 THENCE NORTH 87°50'07" EAST 18.12 FEET;
 THENCE NORTH 00°56'14" EAST 51.68 FEET;
 THENCE SOUTH 89°10'00" EAST 213.18 FEET;
 THENCE NORTH 00°56'14" EAST 141.42 FEET MORE OR LESS TO THE CENTERLINE OF MILL CREEK (WATER WAY);
 THENCE ALONG THE CENTERLINE OF MILL CREEK THE FOLLOWING FOUR COURSES:
 SOUTH 65°52'53" EAST 33.25 FEET,
 SOUTH 57°06'10" EAST 28.46 FEET,
 SOUTH 62°41'38" EAST 45.65 FEET,
 NORTH 57°28'18" EAST 25.31 FEET TO THE WEST LINE OF LINCOLN AVENUE;
 THENCE ALONG SAID WEST LINE THE FOLLOWING FIVE COURSES:
 RIGHT ALONG THE ARC OF A 1184.28 FOOT RADIUS CURVE A DISTANCE OF 155.49 FEET, (CHORD BEARS SOUTH 02°47'40" EAST 155.38 FEET),
 SOUTH 00°58'00" WEST 111.30 FEET,
 LEFT ALONG THE ARC OF A 843.52 FOOT RADIUS CURVE A DISTANCE OF 89.31 FEET (CHORD BEARS SOUTH 02°04'00" EAST 89.27 FEET),
 RIGHT ALONG THE ARC OF A 763.52 FOOT RADIUS CURVE A DISTANCE OF 80.84 FEET (CHORD BEARS SOUTH 02°04'00" EAST 80.81 FEET),
 SOUTH 00°58'00" WEST 186.55 FEET TO THE POINT OF BEGINNING.
 CONTAINS: 177,894 SQ. FT. OR 4.08 AC.

12-253-0001 to 0075 ✓

EXHIBIT C
Retention Easement Area

RETENTION BASIN EASEMENT – BEGINNING AT A POINT ON THE WEST LINE OF THE MILLCREEK MANOR CONDOMINIUM 1ST AMENDMENT, SAID POINT ALSO BEING NORTH 360.41 FEET AND WEST 3.02 FEET FROM THE CENTER OF SECTION 20, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING;

THENCE NORTH 90°00'00" WEST 181.63 FEET;
THENCE NORTH 01°26'51" EAST 153.44 FEET;
THENCE NORTH 87°50'07" EAST 175.28 FEET;
THENCE SOUTH 00°51'32" WEST 74.69 FEET;
THENCE SOUTH 89°08'28" EAST 5.00 FEET;
THENCE SOUTH 00°51'32" WEST 85.26 FEET TO THE POINT OF BEGINNING.

CONTAINS: 27,979 SQ. FT. OR 0.64 AC.

12-119-0079
PT

SURVEYOR'S CERTIFICATE
I, _____, Licensed Professional Surveyor No. _____, State of Utah, do hereby certify that I am a Licensed Surveyor and that I have surveyed the land shown on this plat and that the boundaries, areas and other data shown on this plat are true and correct according to the best of my skill and the best of my knowledge and belief.

I further certify that the above description correctly describes the land which has an interest therein from the Millcreek Condominium Project.

STATE OF UTAH
COUNTY OF WEBER
LAND NO. 57520
DATE _____

OWNER'S CERTIFICATE OF CONSENT TO RECORD
I, _____, do hereby certify that I am the owner of the land described in the foregoing plat and that I have read and understand the contents thereof and that I have signed this certificate of consent to record and that I have authorized the recording of this plat as the same appears thereon.

DATE _____
DATE _____
DATE _____

OWNERS DEDICATION
I, _____, do hereby dedicate to the public use of the State of Utah the land described in the foregoing plat and that I have signed this certificate of dedication and that I have authorized the recording of this plat as the same appears thereon.

STATE OF UTAH
COUNTY OF WEBER
DATE _____
BY _____

ACKNOWLEDGMENT
On this _____ day of _____, A.D. 20____, _____, of the County of _____, State of Utah, do hereby acknowledge that I am the owner of the land described in the foregoing plat and that I have signed this certificate of acknowledgment and that I have authorized the recording of this plat as the same appears thereon.

STATE OF UTAH
COUNTY OF WEBER
DATE _____
BY _____

SILVERPEAK ENGINEERING
175 E ANTELDOPE DR. N
LUTON, UTAH 84041
PHONE (801) 738-5454
FAX (801) 738-5483
BY _____

MILLCREEK MANOR CONDOMINIUM 1ST AMENDMENT
LOCATED IN THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASIN & MERIDIAN, OGDEN CITY, WEBER COUNTY, UTAH

EVERY NO. _____ FILED FOR RECORD AND RECORDED THIS _____ DAY OF _____, A.D. 20____, IN BOOK _____ OF OFFICIAL RECORDS PAGE _____ AT _____

WEBER COUNTY RECORDER
BY _____ DEPT. RECORDER

LEGEND

- NOT ALL ITEMS MAY BE APPLICABLE
- BOUNDARY LINE
- SECTION LINE
- SECTION CORNER
- CENTERLINE MONUMENT
- BAR LINES TO BE SET STRAIGHT BY SURVEYOR'S
- DEPT. MONUMENTS
- URFS COMMON AREA
- COMMON AREA SURVEY
- EXISTING COVERED PASSAGE COMMON AREA
- PROPERTY TO BE VACATED
- REMOVED SIGN EIGHT AREA

QUESTAR GAS
QUESTAR GAS shall be responsible for the installation, maintenance and repair of all gas service lines and appliances within the project area.

CENTURY LINK
CENTURY LINK shall be responsible for the installation, maintenance and repair of all telephone and fiber optic service lines within the project area.

OGDEN CITY COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT
OGDEN CITY COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT shall be responsible for the review and approval of the plat and for the recording of the same.

SCALE 1" = 100' HORIZONTAL SCALE 1" = 100'

REVISIONS

1. _____

2. _____

3. _____

4. _____



