



Department of Public Works

**INSPECTION & STORM WATER
MAINTENANCE AGREEMENT**

Project Name and Address:

McDonald's Restaurant
650 East 800 South
Orem, UT 84097



ENT 108708:2022 PG 1 of 6
ANDREA ALLEN
UTAH COUNTY RECORDER
2022 Oct 11 11:45 am FEE 0.00 BY KR
RECORDED FOR OREM CITY CORPORATION

Parcel No(s): 57:094:0205

Lot No(s) (if applicable): Lot 205

This Agreement is executed this 23 day of AUGUST, 2022, by and between the CITY OF OREM, a municipal corporation and political subdivision of the State of Utah, with its principal offices located at 56 North State Street, Orem, Utah 84057 (hereinafter referred to as the "CITY") and University Mall Shopping Center LC, a Utah LLC, with its principal offices located at/residing at 2733 E. PARLEYS WAY, STE 300, SALT LAKE CITY, UT 84109 (hereinafter referred to as "OWNER").

RECITALS

WHEREAS, OWNER is the owner of real property described as:

LOT 205, PLAT A, UNIVERSITY MALL LOTS 201-205 SUB AREA 0.858 AC.

Said property is located at the Orem street address of 650 East 800 South
(hereinafter called the "Property").

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 City of Orem's Storm Water Utility Ordinance, as amended ("Ordinance"), adopted pursuant to the Utah Water Quality Act, as set forth in Utah Code §§ 19-5-101, *et seq.*, as amended ("Act"); 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 storm and surface water management facilities or improvements ("Storm Water Facilities" or "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; and

WHEREAS, OWNER has submitted to the CITY a description of all Storm Water Facilities, details and all appurtenance 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, ("Long-Term Storm Water Management Plan" or "Plan"), a copy of which is on file with the City of Orem and which is incorporated into this Agreement by reference; and

WHEREAS, the CITY requires that the OWNER comply with and incorporate into their Plan all of the City of Orem LTSWMP Standard Operating Procedures (SOPs) that apply to the property, as the CITY may amend from time to time.

WHEREAS, as a condition of development 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 establishing a means of documenting the execution of the Plan; and

WHEREAS, the CITY and the OWNER, its successors and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of Orem, Utah require that on-site Storm Water Facilities be constructed and maintained on the Property.



COVENANTS

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Storm Water Facilities shall be constructed by the OWNER, its successors and assigns, in accordance with the plans and specifications identified in the Plan.
2. The OWNER, its successors and assigns, including any homeowners association, shall, at its own expense, adequately maintain the Storm Water Facilities in accordance with the Plan as well as the city LTSWMP SOPs incorporated in the Plan. This includes all pipes and channels 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 is herein defined as good working condition so that these facilities are performing their design functions. OWNER acknowledges that OWNER is obligated to comply with all requirements as set forth in the Plan. If there are any differences between the Plan and any other site plans of subdivision approval documents, the Plan shall control.
3. The OWNER, its successors and assigns, including any homeowners association, shall ensure the Storm Water Facilities are inspected by a qualified professional biennially. The inspection report shall be due on September 29 with the first inspection report being due the year following development completion. OWNERS shall use the standard form provided by the City to complete the biennial report. The inspection report form may be obtained online or in person from the Storm Water Section of the City's Public Works Department. OWNER shall send a copy of the inspection record to the CITY. (Attention to: Storm Water Program Manager 1450 W 550 N Orem UT, 84057 or E-mail a copy to swmp@orem.org) OWNER shall be responsible for maintaining all inspection records and must make such records available to the CITY upon request. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure(s), pond/detention areas, access roads, etc. Deficiencies shall be noted in the inspection report.
4. The OWNER, its successors and assigns, including any homeowners association, hereby grant permission to the CITY, its authorized agents and employees, to enter upon the Property and to inspect the Storm Water Facilities whenever the CITY deems necessary. The purpose of inspection is to follow-up on reported or suspected deficiencies and/or respond to citizen complaints. The CITY shall provide the OWNER, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.
5. This Agreement hereby grants to the CITY any and all maintenance easements set forth herein, in the Plan, or the final site plan as required to access and inspect the Storm Water Facilities.



6. In the event the OWNER, its successors and assigns, including any homeowners association, fails to maintain the Storm Water Facilities in good working condition acceptable to the CITY, the CITY may enter upon the Property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the OWNER, its successors and assigns, including any homeowners association. This provision shall not be construed to allow the CITY to erect any structural storm water management facilities. It is expressly understood and agreed that the CITY is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the CITY.
7. 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, its successors and assigns, including any homeowners association, shall reimburse the CITY upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the CITY hereunder. 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 collection costs, including attorneys' fees and court costs, incurred by the CITY in collection of delinquent payments.
8. This Agreement imposes no liability of any kind whatsoever on the CITY. OWNER, its administrators, executors, success, heirs and assigns, including any homeowners association, hereby indemnifies and holds harmless the City, its authorized agents, officials, officers, employees, and volunteers 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 by the OWNER or the City when the City acts in accordance with paragraph 8 of this Agreement. In the event a claim is asserted against the City, its authorized agents, officials, officers, employees, or volunteers, the City shall promptly notice the OWNER and the OWNER shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its authorized agents, officials, officers, employees or volunteers shall be allowed, the OWNER shall pay for all costs and expenses in connection herewith.
9. **This Agreement shall be recorded among the land records of Utah County, Utah, and shall constitute a covenant running with the land, and shall be binding on the OWNER, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowners association. 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, including any homeowners association, and shall bind all present and subsequent owners of the Property described herein. Upon conveyance of the Property being completed, all covenants and obligations of the OWNER under this Agreement shall cease, but such covenants and obligations shall run with the land and shall be binding upon the subsequent owner(s) of the Property.**



10. The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, bylaws and other legal requirements applicable to their operation.
11. This Agreement shall be interpreted pursuant to the laws of the State of Utah.
12. Time shall be of the essence of this Agreement.
13. In the event that either party should be required to retain an attorney because of the default or breach of the other or to pursue any other remedy provided by law, then the non-breaching or non-defaulting party shall be entitled to a reasonable attorney's fee, whether or not the matter is actually litigated.
14. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include the other gender. The paragraphs and section headings in this Agreement contained are for convenience only and do not constitute a part of the provisions hereof.
15. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.
16. Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that both parties have participated in the preparation hereof.
17. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties hereto.
18. 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.



SIGNED and ENTERED INTO this 23 day of AUGUST, 20 22.

OWNER

UNIVERSITY MALL SHOPPING CENTER, L.C., a Utah limited liability company

By: WOODBURY MANAGEMENT COMPANY, L.C., a Utah limited liability company, Its Manager

By: [Signature]
O. Randall Woodbury, Manager

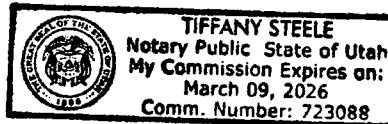
By: [Signature]
W. Richards Woodbury, Manager

STATE OF UTAH)

COUNTY OF SALT LAKE ^{SS.}
UTAH
gms

The above instrument was acknowledged before me by D. Randall Woodbury & W. Richards Woodbury this 23rd day of August, 2022.

[Signature]
Notary Public
Residing in: Salt Lake County
My commission expires: _____



CITY

[Signature]
ASSISTANT PUBLIC WORKS DIRECTOR
Reed S. Price

FOR CITY USE ONLY

Property description verified: [Signature]
Long-Term Storm Water Management Plan Approved: [Signature]
Agreement Reviewed & Approved by Storm Water Staff: [Signature]

Date: 10-5-22
Date: 8-31-22
Date: 8-31-22

Inspection and Storm Water Maintenance Agreement